

# **BROWNFIELD REVITALIZATION AND ENVIRONMENTAL RESTORATION ACT OF 2000**

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## **HEARING**

BEFORE THE  
SUBCOMMITTEE ON SUPERFUND,  
WASTE CONTROL, AND RISK ASSESSMENT  
OF THE

COMMITTEE ON  
ENVIRONMENT AND PUBLIC WORKS  
UNITED STATES SENATE  
ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

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JUNE 29, 2000

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ON

**S. 2700**

A BILL TO AMEND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE,  
COMPENSATION, AND LIABILITY ACT OF 1980 TO PROMOTE THE  
CLEANUP AND REUSE OF BROWNFIELDS, TO PROVIDE FINANCIAL AS-  
SISTANCE FOR BROWNFIELDS REVITALIZATION, TO ENHANCE STATE  
RESPONSE PROGRAMS, AND FOR OTHER PURPOSES

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## **BROWNFIELD REVITALIZATION AND ENVIRONMENTAL RESTORATION ACT OF 2000**

**THURSDAY, JUNE 29, 2000**

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,  
SUBCOMMITTEE ON SUPERFUND, WASTE CONTROL AND RISK  
ASSESSMENT,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 2 p.m. in room 406, Senate Dirksen Building, Hon. Lincoln Chafee (chairman of the subcommittee) presiding.

Present: Senators Chafee, Inhofe, and Lautenberg.

Also present, Senators Baucus and Grassley.

### **OPENING STATEMENT OF HON. LINCOLN CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND**

Senator CHAFEE. The hearing will come to order.

Good afternoon. I'm Senator Chafee, chairman of the Subcommittee on Superfund, of the Environment and Public Works Committee. I'd like to make a brief opening statement.

Today the subcommittee will receive testimony on S. 2700, the Brownfields Revitalization and Environmental Restoration Act of 2000. As you know, I introduced this legislation with Senators Lautenberg, Smith and Baucus on June 8. Members of the committee have heard thorough testimony so far.

We've also received constituent letters and had meetings with those interested in brownfields redevelopment and know that it's an important issue that does need to be addressed. In response to this overwhelming call for brownfields legislation, Senators Smith, Lautenberg, Baucus and I did reach consensus on S. 2700. We hope this landmark bipartisan bill, which is pro-environment and pro-economic development will attract broad support from Senators and interested groups.

In fact, I'm pleased to announce that as of today, we have 40 Senators who cosponsored S. 2700. If I could, I'd just like to read them to give you a sense of the depth of our support. Chafee, Smith from New Hampshire, Grassley, Gorton, Jeffords, Snow, Warner, Collins, DeWine, Graham, Mack, Helms, Hutchinson from Arkansas, Smith from Oregon, Brownback, Baucus, Lautenberg, Akaka, Leahy, Levin, Lieberman, Mikulski, Moynihan, Schumer, Reid, Breaux, Bryan, Kerry from Nebraska, Kennedy, Sarbanes, Gramm, Robb, Dodd, Harkin, Cleland, Edwards, Wyden, Feinstein, Daschle

and Kennedy from Massachusetts. And we're getting more every day.

And of course, having the chairman and the ranking members of both the Environment and Public Works Committee and the Superfund Subcommittee supporting this legislation underscores the strong desire of our members on both sides of the aisle in working in a bipartisan manner to achieve this success. This committee has a proven track record of forging sound legislation when members of both parties work together. And S. 2700 is an example of that bipartisan tradition.

I would like to say that, as you know, this bill does authorize \$150 million per year to State and local governments to perform assessments and cleanup at the Nation's brownfield sites. It does allow EPA to issue grants to State and local government to clean up sites that will be converted into non-revenue generating parks and open spaces. It clarifies that innocent landowners are not responsible for paying cleanup costs. It does encourage developers to purchase and develop brownfield sites by exempting from liability prospective purchasers that did not cause or worsen the contamination at the site.

It also includes an exemption for contiguous property owners that will prevent landowners from paying cleanup costs simply because their neighbor contaminated the land. The bill provides \$150 million annually to States to establish and enhance voluntary cleanup programs. And last, the bill precludes the Environmental Protection Agency from taking an action at a site being addressed under a State cleanup program unless the State requests the EPA's assistance, or EPA determines there is an imminent and substantial endangerment to public health or the environment and additional work needs to be done.

So I look forward to the testimony. I believe it's a good bill. I think it's long overdue, frankly. And as a former mayor, there's nothing mayors like more than having revenue. When we see these sites sitting unused, it deprives us of that life sustaining revenue that we as mayors thrive on.

[The prepared statement of Senator Chafee follows:]

STATEMENT OF HON. LINCOLN CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Good afternoon. Today, the subcommittee will receive testimony on S. 2700, the Brownfields Revitalization and Environmental Restoration Act of 2000. As you know, I introduced this legislation with Senators Lautenberg, Smith, and Baucus on June 8th. Members of this committee have heard through testimony, constituent letters, and meetings with stakeholders that brownfields redevelopment is an important issue that needs to be addressed. In response to this overwhelming call for brownfields legislation, Senators Smith, Lautenberg, Baucus, and I reached a consensus position, S. 2700. We hope this landmark, bipartisan bill—which is pro-environment and pro-economic development—will attract broad support from Senators and stakeholder groups. In fact, I am pleased to announce that as of today 39 Senators have cosponsored S. 2700.

Having the chairmen and ranking members of both the Environment and Public Works Committee and the Superfund subcommittee support this legislation underscores the strong desire by members on both sides of the aisle to enact this legislation. Indeed, I strongly believe that reaching across the aisle and working in a bipartisan manner is the best way to achieve success, particularly on environmental issues. This committee has a proven track record of forging sound legislation when members from both parties work together. S. 2700 is another example of that bipartisan tradition.

As everyone is aware, this committee has tried for years to reform the Superfund statute. However, broad Superfund reform has eluded us because we have not been able to reach a bipartisan agreement. While brownfields provisions have been included in comprehensive reform bills in the past, I do not consider brownfields a Superfund issue. Superfund is intended to tackle the nation's worst toxic waste sites. Brownfields are lightly contaminated sites that will never become Superfund sites, if we provide incentives to clean them up in a timely manner. I have visited Superfund sites and brownfield sites in Rhode Island, and they are truly different. At my visits to brownfield sites, it is possible to actually see the benefits that communities would enjoy through brownfield revitalization. I firmly believe that we must help these communities by enacting legislation this year.

There are members of this committee who have expressed strong concern about moving brownfields legislation separately from comprehensive reform. Let me be clear: this bill is not intended to serve as a substitute for comprehensive Superfund reform. This bill is intended to spur the cleanup and redevelopment of the nearly 450,000 brownfields sites that exist in every town and every state. S. 2700 does not address everything—but it does offer something for everyone.

I would also like to address a point I hear frequently. People often tell me it is impossible to enact environmental legislation in a Presidential election year. I believe history tells a different story. Important environmental legislation has been enacted in virtually every Presidential election year since Congress became active in these issues. In 1972, Congress passed the Clean Water Act; in 1976, the Resources Conservation and Recovery Act; in 1980, Superfund; in 1984, RCRA reauthorization; and in 1996, Safe Drinking Water Act reauthorization. I hope that our work on brownfields reform follows this tradition in 2000.

The U.S. Conference of Mayors has estimated that more than 450,000 brownfields sites exist nationwide. We stand to reap enormous economic, environmental, and social benefits with the successful redevelopment of brownfield sites. The redevelopment of brownfields capitalizes on existing infrastructure, attracts new businesses and jobs, reduces the environmental and health risks to communities, preserves community character, and creates a robust tax base for local governments. Mayor Bollwage and Mayor Daniels will correct me if I'm wrong, but as a former mayor, I know that there is nothing that makes mayors happier than increased revenue and an extended taxbase.

Our bill is an important piece of legislation that addresses the most common problems facing the redevelopment of abandoned contaminated sites. As this committee has heard from numerous witnesses in the past, the most difficult problems confronting successful redevelopment are the high costs associated with brownfields assessment and cleanup, the threat of Superfund liability, and fear that EPA may second-guess cleanup plans. To tackle these problems, S. 2700 authorizes \$150 million for brownfields assessments and remediation. It clarifies liability for contiguous property owners, innocent landowners, and prospective purchasers. Last, it provides finality to parties that clean up sites under state programs, with reopeners designed to protect human health and the environment.

I look forward to working with every member of this committee, and all interested parties to move the ball over the goal line. I am confident that if we work closely, we can accommodate all concerns and forge legislation that will benefit the entire country. I would like to thank each of witnesses for being here today, and I look forward to hearing your testimony.

I'd like to welcome the Senator from Oklahoma, Jim Inhofe.

**OPENING STATEMENT OF HON. JAMES M. INHOFE,  
U.S. SENATOR FROM THE STATE OF OKLAHOMA**

Senator INHOFE. Thank you, Mr. Chairman. And as a previous mayor, I do understand what you're talking about.

I do have an keen interest in brownfields and in Superfund legislation. Over the years, the subcommittee has had numerous hearings and seen numerous legislative proposals introduced. While I commend my colleagues for bringing up this brownfields issue, I must ask, where are the other titles to this bill? I still think that liability, remedy reform, natural resources damages, the States' role in cleanups are major issues which need to be addressed.

I strongly believe all of these issues very much need to be addressed, not just the brownfields. And so does the General Account-

ing Office. I believe it was Congressman Bliley's committee, that they asked the GAO to get involved in a report. And in this report they said, and I'm quoting now, "Superfund, extent to which most reforms have improved the program is unknown." This report finds that 42 of the 62 administrative Superfund reforms implemented by the EPA "did not have a fundamental effect and are unmeasurable."

Mr. Chairman, I'd like for this report to be made a part of the record of this committee.

Senator CHAFEE. Without objection.

[The report follows:]

[GAO Report to Congress, May 12, 2000]

SUPERFUND: EXTENT TO WHICH MOST REFORMS HAVE IMPROVED THE PROGRAM IS UNKNOWN

(Letter Report, GAO/RCED-00-118)

For years, the Environmental Protection Agency's (EPA) Superfund program has been criticized for a number of problems. These have included the pace and cost of cleaning up hazardous waste sites, the agency's approach for holding waste contributors liable for cleaning up sites, and the overall effectiveness of the program. Responding to these criticisms, in June 1993, EPA began implementing a series of 62 administrative reforms—actions that it could take under its existing legal authority to improve the program's fairness, efficiency, and effectiveness. According to EPA, these reforms have led to faster cleanups of more sites, thereby better protecting public health and the environment. In addition, EPA maintains that the reforms have promoted the selection of more cost-effective cleanup methods and fairer enforcement of the law. The agency has publicly stated that, because of the administrative reforms, comprehensive legislative reform of the Superfund program is no longer necessary, although the agency is willing to support certain targeted legislative changes.

As the Congress considers reauthorizing the Superfund law, it has been debating the extent to which legislative changes to the program would be desirable. A key factor in making this determination is the extent to which EPA's administrative reforms have addressed previously identified weaknesses in the program. In this context, you requested that we review EPA's reforms to:

- determine their demonstrated results and evaluate the performance measures the agency uses to gauge these results and
- identify legislative changes to the program that either the agency or key stakeholders—including, among others, officials representing parties responsible for cleanups, environmental groups, and states—believe are still necessary.

We obtained basic information from EPA for all 62 reforms, including their characteristics, scope, implementation status, overall goals, and performance measures, where available. We also conducted a more detailed analysis of a subset of 14 reforms that the agency characterized as having significantly and measurably improved the program. Appendix I provides a summary of our analysis of each of the 14 reforms. Appendix II provides a summary of the information we collected on the remaining 48 reforms. To determine the results of the reforms and any legislative changes needed, we met with a judgmental sample of officials representing key stakeholders affected by the Superfund program, including various industry groups, state cleanup agencies, and environmental groups. Officials representing industry and state cleanup agencies provided the majority of the comments about the reforms. (App. III provides a listing of the stakeholders we contacted and a more detailed discussion of our scope and methodology.)

*Results in Brief*

EPA claims and stakeholders agree that, in general, the Superfund program has improved and the administrative reforms have collectively contributed to this improvement. However, we determined that, for a majority of the 62 reforms, it is difficult for the agency to demonstrate the extent to which they are working and have met the goals set for them—to make the program faster, fairer, and more efficient. While maintaining that all the reforms are important, EPA reform managers acknowledged that:



- 42 reforms did not have a fundamental effect, and EPA could not easily collect the data to measure the results achieved for most of them;
- 20 reforms had a fundamental effect; for these reforms,
  - the agency's performance measures demonstrated that 7 had achieved benefits, such as dollar savings—EPA has saved \$70 million to date by identifying less costly cleanup alternatives—and greater community involvement in cleanups;
  - the agency's measures counted the number of times that 7 were implemented but did not demonstrate the results achieved; and
  - the agency did not have measures to demonstrate the results that 6 had achieved.

Furthermore, EPA's data for the 14 fundamental and measurable reforms show two trends suggesting that the progress made to date may be eroding. First, the implementation rates for almost half of these reforms peaked in fiscal year 1997 and declined in subsequent years. Second, the implementation rates for some reforms varied widely among the regions, possibly indicating inconsistent application. Moreover, stakeholders identified regional inconsistency as a problem with some reforms, and EPA acknowledged that ensuring such consistency is a challenge. Therefore, better measurement and oversight of the key reforms, as well as better understanding of the reasons for regional variation in the implementation of some, could help EPA obtain the maximum benefits possible from its reform initiative. We are making recommendations that the agency take such actions.

EPA and stakeholders agree that targeted legislative changes would do more than the agency's administrative reforms to protect certain parties from the current Superfund law's liability provisions; however, they disagree on the extent of change. According to EPA, it is not seeking any legislation to codify its reforms, but it would support legislative proposals to limit liability for some parties that stakeholders have identified. These parties include prospective purchasers of contaminated property and current owners who are not responsible for or aware of contamination on their property. EPA does not see a need for other legislative changes, such as limiting liability for small businesses, because it believes its reforms have created the tools needed to provide relief for these parties.

#### *Background*

In 1980, the Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, to clean up highly contaminated hazardous waste sites. EPA places sites that it determines may need long-term cleanup actions, called remedial actions, on its National Priorities List (NPL). For sites needing cleanup, EPA or private parties conduct studies to assess the risks and select, design, and construct cleanup remedies. CERCLA authorizes EPA to compel the parties responsible for the contaminated sites to clean them up. Under CERCLA, any responsible party at a site can, under some circumstances, be held responsible for the entire cost of the cleanup.<sup>1</sup> Responsible parties can, in turn, sue other parties to recoup some of their own expenses. Through this process, parties can incur high legal costs. The law also allows EPA to pay for cleanups and seek reimbursement from the parties, and it established a trust fund, financed primarily by taxes on crude oil and chemicals, to help EPA pay for its cleanups and related activities. The Superfund program's authorization and the authority for the taxes financing the trust fund expired in 1995 and have not been renewed. The Congress continues to fund the program through annual appropriations from the Superfund trust fund and general revenues.

Meanwhile, to address concerns about the high costs and long duration of cleanups, EPA, beginning in 1993, publicly announced three separate rounds of administrative reforms—actions it could take within its existing legislative authority. These include:

- 17 reforms announced in June 1993,
- 19 reforms announced in February 1995, and
- 26 reforms announced in October 1995.

These 62 reforms were intended to cover a range of activities, such as (1) providing liability relief to certain parties, including contributors of small volumes of waste or innocent landowners and purchasers, (2) selecting more technologically advanced and cost-effective cleanup remedies, (3) providing funds to assess brownfield

<sup>1</sup>Responsible parties include present (and some former) site owners, operators, transporters, and persons who arrange for the treatment or disposal of hazardous substances.

sites to promote their economic redevelopment,<sup>2</sup> (4) providing technical assistance so that communities and tribes located near sites can better participate in cleanup decisions, and (5) providing for an expanded role for states and tribes in the performance of the program.

In 1997, we reviewed the 45 reforms from the second and third rounds and reported that EPA regarded 25 of them, or 56 percent, as fundamental changes to the Superfund program but could quantify accomplishments for only 6 of them, or 13 percent.<sup>3</sup> EPA stated that, overall, it did not need additional legislative authority to achieve the reforms' goals but that targeted new authority would enhance their implementation.

The Government Performance and Results Act of 1993 (the Results Act) requires that agencies, among other actions, (1) establish strategic plans containing general goals for the agencies and (2) prepare annual performance plans that establish goals and measures to assess the results of individual programs. Therefore, in response to requirements of the Act, EPA established three general goals for the reforms—faster, fairer, and cost-effective cleanups—and performance measures for a number of the reforms, all of which support the agency's strategic and annual goals for the Superfund program overall. The performance measures for the reforms are intended to demonstrate progress toward achievement of their goals, which include, among others, increasing the number of sites where the construction of the cleanup remedy has been completed and maximizing the participation in cleanups of the parties responsible for contamination at sites.

*EPA Does Not Have Performance Measures to Link Most Reforms to Improvements in the Program*

EPA claims that as a result of the administrative reforms, the program is fairer and cleanups are 20 percent faster and cheaper.<sup>4</sup> The stakeholders we contacted also commented that overall, after 20 years, they have a better working relationship with EPA, the agency is fairer in dealing with responsible parties, and it is easier to use remedies that are, in their opinion, more reasonable and cost-effective. But stakeholders also had questions about the extent to which some of the administrative reforms had really improved the program. We reviewed EPA's performance measures for each reform and found that the agency has more measures in place since our last review, and for a small number of reforms, the measures demonstrate results such as cost savings. However, EPA cannot directly link the majority of its reforms to improvements in the program.

According to EPA reform managers, all 62 reforms are important and have helped to improve the program, but 42 of them involve activities that (1) did not have a fundamental impact on the program and (2) could not easily be measured for any results achieved. EPA reform managers identified the remaining 20 reforms as activities that have had a fundamental effect on the program. EPA has established performance measures for 14 of them—an increase since our prior review, when EPA had measures for 6 of its key reforms. As table 1 illustrates, EPA's measures for all 14 reforms track the number of times they were implemented, but measures for only 7 reforms demonstrate how they have improved the program.

<sup>2</sup> EPA defines brownfields as abandoned or underused facilities, usually in industrial or commercial areas, where redevelopment is hampered by real or perceived environmental contamination.

<sup>3</sup> Superfund: Information on EPA's Administrative Reforms (GAO/RCED-97-174R, May 30, 1997).

<sup>4</sup> GAO and EPA have, in the past, disagreed on whether the methodology that EPA uses as a basis for saying that the program is cleaning up sites faster is appropriate (see Superfund: Times to Assess and Clean Up Hazardous Waste Sites Exceed Program Goals (GAO/T-RCED-97-69, Feb. 13, 1997), Superfund: Times to Complete the Assessment and Cleanup of Hazardous Waste Sites (GAO/RCED-97-20, Mar. 31, 1997), and Superfund: Duration of the Cleanup Process at Hazardous Waste Sites on the National Priorities List (GAO/RCED-97-238R, Sept. 24, 1997)). We have not assessed the agency's estimate of cost savings.

Table 1: Fourteen Fundamental/Measurable Reforms and Their Output and Outcome Measures

Fundamental/measurable reform	Year of reform	Measures that count frequency of implementation (output)	Measures that demonstrate results (outcome)
Encourage greater use of alternative tools for resolving liability disputes.	1993 <sup>1</sup>	EPA has used this tool at 9–24 sites each year. .... The number of settlements that EPA reached peaked in fiscal year 1997 and declined slightly the following year. Data for fiscal year 1999 were not available..	
Promote “enforcement first”—getting private parties to fund most of the cleanups.	1993 <sup>1</sup>	EPA maintains that responsible parties have funded about 70–84 percent of cleanups since fiscal year 1992, the year before EPA announced the reform..	
Promote more settlements to provide liability protection for <b>de minimis</b> contributors (parties that contribute small amounts of waste).	1993 <sup>1</sup>	EPA has achieved more settlements after the reform (33–105 each year) than before the reform. The number of settlements EPA achieved peaked in fiscal year 1997, significantly declined in fiscal year 1998, and only slightly increased in fiscal year 1999.	
Negotiate agreements to provide liability protection for prospective purchasers of contaminated property.	1995 <sup>1</sup>	EPA has signed 16–28 agreements each year since the reform. The number of agreements EPA achieved peaked in fiscal year 1997 and has been declining over the past 2 years..	EPA facilitated the purchase of 1,500 acres of contaminated property and the redevelopment of hundreds of thousands of adjacent acres.
Provide compensation for cleanup costs attributable to insolvent and defunct parties (orphan shares).	1995	EPA has made from 20–30 compensation offers each year, for a total of \$175.3 million.. EPA has reached agreement on a total of 47 of these offers, for \$88 million..	
Encourage the use of special accounts for site-specific cleanup costs.	1995 <sup>1</sup>	EPA has set up 18–33 accounts each year since the reform, making over \$570 million available for site-specific cleanups.. EPA will measure the number and amounts of disbursements from these accounts beginning in fiscal year 2000.. The number of accounts EPA established peaked in fiscal year 1997 and has been declining over the past 2 years..	
Revise guidance on liability protection settlements for <b>de minimis</b> parties (parties that contribute miniscule amounts of waste).	1995	EPA has made a total of 16 settlements? .....	
Update cleanup remedy decisions to take advantage of new science and technology.	1995 <sup>1</sup>	EPA began updating remedies as early as 1983 and has updated 61–85 remedies each year since fiscal year 1995, the year before it announced this reform.. The number of remedies EPA updated peaked in fiscal year 1997, declined in fiscal year 1998, and remained at about that level in fiscal year 1999..	EPA estimates the net future cost savings from the updates conducted during fiscal years 1996–99 could total \$1.3 billion. <sup>3</sup>

Table 1: Fourteen Fundamental/Measurable Reforms and Their Output and Outcome Measures—Continued

Fundamental/measurable reform	Year of reform	Measures that count frequency of implementation (output)	Measures that demonstrate results (outcome)
Increase the number of sites where the construction of all cleanup remedies has been completed.	1993 <sup>1</sup>	EPA has completed the construction of all remedies at 61–88 sites each year since fiscal year 1992, the year before it announced this reform.	
Establish the National Remedy Review Board to review high-cost proposed remedies.	1995	EPA has reviewed 9–11 cleanup proposals each year .....	EPA estimates that its reviews have saved a total of \$70.7 million to date.
Use the Superfund Accelerated Cleanup Model (which allows the use of shorter-term cleanup actions, called removals, and combined site assessment activities).	1993 <sup>1</sup>	EPA has accomplished 12–27 non-time-critical removals each year since fiscal year 1992, the year before it announced this reform.. EPA accomplished a total of 442 integrated assessments and 405 combined assessments through fiscal year 1999..	EPA estimates that it saves, on average, about \$2,500 and 11 months by combining assessments at a site.
Fund brownfield assessment pilot projects .....	1995 <sup>1</sup>	EPA funded a total of 305 assessment grants through October 1999.	EPA estimates that over 1,900 properties have been assessed, 120 have been cleaned up, and 169 have been redeveloped and tat over 5,800 jobs and about \$1.9 billion of private dollars have been leveraged at sites assessed with EPA funds.
Establish community advisory groups .....	1995 <sup>1</sup>	EPA has helped to form 3–16 community advisory groups each year.. The number of groups EPA established peaked in fiscal year 1997 and has been declining over the past 2 years..	EPA surveyed members of communities near 7 Superfund sites and determined that 47 percent believe that EPA is effectively involving them in the Superfund process.
Promote early and more effective community involvement (primarily through technical assistance grants and outreach projects).	1993	EPA has awarded 4–37 grants each year since fiscal year 1988 and has conducted 7–46 technical outreach projects each year.. The number of grants awarded since the reform peaked in fiscal year 1995 declined the next year, and has remained at about that level.. The number of outreach projects established peaked in fiscal year 1998 and declined in fiscal year 1999..	EPA surveyed members of communities near 7 Superfund sites and determined that 47 percent believe that EPA is effectively involving them in the Superfund process.

<sup>1</sup>This was not a new activity, but EPA reemphasized or revised it as part of the Agency's administrative reform effort.

<sup>2</sup>According to EPA, the fact that so few parties have asked for a settlement means that such parties are no longer being threatened with lawsuits from larger parties for a share of the cleanup costs.

<sup>3</sup>We did not verify the accuracy of EPA's savings estimate; a 1997 industry study cautioned that these savings may be overstated.

Source: GAO's presentation of information from EPA.

EPA's outcome measures demonstrate positive results for seven reforms. The measures indicate that two reforms have helped the agency move toward its goal of more cost-effective cleanups by achieving significant dollar savings on the types of remedies selected at sites. The measures also demonstrate that five other reforms have achieved positive results, such as an increase in the number of brownfield sites assessed (since assessment leads to cleanup and redevelopment) and feelings of greater participation in cleanup decisions expressed by some communities that received grants, technical assistance, or outreach from EPA.

For the seven reforms that do not have outcome measures, it is difficult for EPA to determine how well they are working, whether they need revision to become more effective, and whether they are achieving their intended results—faster, fairer, and cheaper cleanups. For example, it is difficult for the agency to determine from its performance measures whether using alternative dispute resolution has led to settlements with responsible parties that are fairer, take less time, and reduce legal costs. It is also difficult for the agency to determine, just by counting how many times a reform has been implemented each year, the extent to which the reform has become a routine part of the overall program.

EPA reform managers acknowledged that it is very difficult to set performance measures that directly demonstrate the extent to which the 14 reforms are achieving their goals. The managers pointed out that a number of reforms, such as those addressing the remedies selected at a site, work together to cumulatively benefit the program and the agency cannot separately measure the contribution of each reform. The managers further acknowledged that factors other than the reforms themselves likely contributed to the benefits the agency attributes to some of the reforms. For example, an agencywide policy on the use of alternative dispute resolution across all EPA programs, not the Superfund reform alone, helped to increase the use of this technique, and the agency cannot measure the success of this reform alone.

In a November 1997 internal review of the reforms, EPA acknowledged limitations in its performance measures and agreed that it needed to do more than count how many times a reform has been implemented to determine its results. Furthermore, when the agency has tried to improve its evaluation of a reform, its efforts have paid off. Specifically, it has learned in some instances that a reform was not working as well as intended and needed to be improved. For example, in 1999, EPA completed the first phase of an ongoing effort to measure the effects of its community involvement reforms. One of its findings was that only about half of those surveyed considered the agency effective in involving their communities in the Superfund process, leading the agency to conclude that it needed to improve its implementation of these reforms. To its credit, EPA is taking actions to evaluate the performance of the reforms overall, as well as of certain individual reforms. The agency is about to update its 1997 internal review of the reforms to develop a strategy to improve their implementation. In addition, it is currently compiling the results of a survey it conducted with 36 property buyers to determine how effectively its agreements with these buyers to limit their liability under Superfund law have helped to stimulate the reuse of their properties.

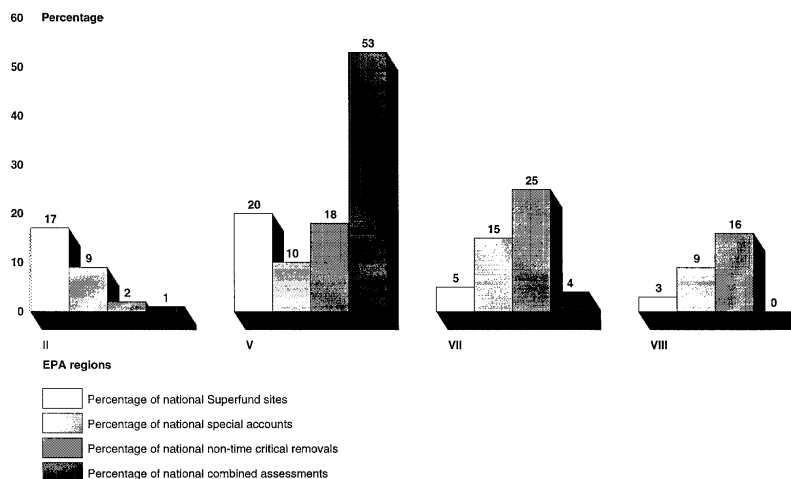
The agency recognizes that to fully evaluate the results of reforms, it needs input from responsible parties. One way of obtaining this input is by surveying parties on the reforms. However, under the Paperwork Reduction Act, EPA cannot survey more than nine members of the public without the approval of the Office of Management and Budget (OMB). In 1999, EPA asked OMB for general authority to conduct up to 15 separate surveys of responsible parties' experiences with the reforms. OMB denied the request, in part because it did not specify how EPA planned to collect and analyze the data. However, OMB encouraged EPA to resubmit its request after it had developed a statistical data collection and analysis plan, among other things. EPA managers said they are trying to decide how to respond to OMB's suggestions, given the agency's limited resources for contractors to perform surveys and competing priorities for these resources. During March of this year, however, EPA did obtain general agencywide authority from OMB to conduct customer satisfaction surveys. This authority may be sufficient for the reform managers to survey responsible parties on the reforms.

EPA's data on the 14 reforms also showed two trends indicative of limits on the progress achieved to date and possibly in the future, namely, that EPA may not be sustaining its implementation of the reforms and that the regions may be inconsistent in their use of some reforms. First, EPA's data on the number of times the 14 reforms have been implemented showed that for almost half of the reforms, implementation peaked in fiscal year 1997 and then declined in subsequent years. This suggests that the regions may not be sustaining the level of implementation achieved after the reforms were announced and may need additional support or incentives to sustain their implementation. Alternatively, other factors may be miti-

gating the effects of the reforms over time. EPA reform managers acknowledged that the implementation of some reforms may naturally decline at some time in the future, when EPA has finished constructing most remedies and is likely to be bringing fewer sites into the program. We acknowledged in two 1999 reports that the construction of most remedies at sites currently in the program would be completed by 2005 and that, because states are now taking on more of the cleanup workload, fewer sites may come into the program in the future.<sup>5</sup> However, EPA cleanup managers stated that these possible future trends for the program do not explain the declines in implementation that we identified for fiscal years 1998 and 1999.

Second, EPA's data also showed that the regions varied widely in the number of times they used most of the reforms, possibly indicating inconsistency in their use of the reforms. According to the data, all regions appear to be giving priority to completing the construction of cleanup remedies. In part, this is because EPA headquarters has made this a top priority for the Superfund program, has monitored the regions' implementation closely, and this past year for the first time made mid-year regional budget adjustments to reward the regions that were achieving this goal. However, the data for other reforms do not appear to show consistent levels of implementation across the regions. For example, regions II and V have relatively large portions of the overall Superfund workload to manage—17 and 20 percent, respectively. Yet Region V implemented a significantly higher portion of the total non-time-critical removals and combined site assessments than Region II, as figure 1 illustrates. Likewise, regions II and V used special accounts and removals less frequently or as often as regions VII and VIII, yet these latter two regions had much smaller portions of the Superfund workload. Such regional variation could indicate that certain regions are not realizing the potential savings in time and costs expected from the reforms.

Figure 1: Comparison of Four Regions' Superfund Workloads and Rates of Implementation for Three Reforms



Source: GAO's presentation of data from EPA.

EPA reform managers pointed out that factors other than the sizes of the regions' Superfund workloads may account for the variation and are beyond the regions' control. For example, for several reforms, such as those to enhance community involvement in cleanups, the regions can offer the reforms, but it is up to stakeholders to pursue them. Or, one region may have fewer sites involving multiple responsible parties, so that region may have fewer opportunities to use some of the reforms aimed at achieving faster, cheaper settlements. However, without determining why such significant variations exist among the regions, EPA cannot be sure that its reforms are being used to the maximum extent possible.

<sup>5</sup> *Superfund: Progress Made by EPA and Other Federal Agencies to Resolve Program Management Issues* (GAO/RCED-99-111, Apr. 29, 1999), and *Superfund: Half the Sites Have All Cleanup Remedies in Place or Completed* (GAO/RCED-99-245, July 30, 1999).

Furthermore, EPA reform managers acknowledged that ensuring regional consistency is a constant challenge for the agency and that some regions were quicker than others to embrace the reforms. In fact, in a 1997 review of the reforms, EPA itself identified the need to ensure better commitment to the reforms. The EPA managers noted that differences in the organizational structures and leadership of the regions could lead to inconsistencies in implementing the reforms. Likewise, industry and state cleanup agency officials expressed concerns that some regions, and even cleanup managers within regions, are less willing than others to implement certain reforms. These officials felt, therefore, that they could not realize the full benefits of the reforms, such as lowering litigation and cleanup costs.

EPA reform managers in headquarters and in the two regions we contacted outlined EPA's current methods to help ensure that the regions implement the reforms. These include the use of headquarters liaisons to the regions who monitor the regions' progress toward annual targets—the number of times the regions implement certain reforms—and conduct regional visits, conference calls, and training sessions to discuss the reforms. EPA has also issued new or updated guidance on the use of some of the reforms. By better targeting these methods, EPA could more fully achieve the reforms' goals across the regions.

#### *EPA and Stakeholders Support Legislative Changes to Varying Degrees*

EPA and some stakeholders we contacted—officials representing industry, state cleanup agencies, and environmental and community groups—agreed on the benefits of establishing some of the administrative reforms in law but disagreed on the need to do so for other reforms. More specifically, the stakeholders preferred that reforms intended to provide liability protection to certain parties, such as prospective property purchasers, be established in law. Stakeholders worried that otherwise, EPA regions had too much discretion to decide which parties would benefit and affected parties did not have a firm basis to challenge these decisions. EPA managers explained that the agency would support legislation, if proposed, to provide liability relief for such parties but that the agency itself is not currently seeking any legislation to codify its reforms. According to EPA, it would support such proposals because they would (1) give such parties greater assurance that they would not be held liable for the costs of a cleanup under Superfund, (2) reduce the parties' legal costs, and (3) promote the development of brownfields, since the fear of being held liable under current Superfund law can deter parties from pursuing brownfield cleanups and redevelopment.

Stakeholders and EPA both favored legislation that would provide liability protection for:

- prospective purchasers of contaminated property,
- landowners who were not responsible for or aware of contamination on their property (innocent landowners),
- owners of property contiguous to a contaminated site, and
- small municipal waste generators and transporters.

Both EPA and the officials representing industry would also like the agency to be able to compensate parties more extensively for the shares of cleanup costs attributable to insolvent or defunct parties as a means of promoting faster and less costly settlements. However, EPA cleanup managers said that the agency could not afford to do this without obtaining additional funding authority for this purpose from the Congress. The managers said the agency continues to request additional funds for the Superfund program that would allow it to devote more resources to covering such shares of cleanup costs—\$150 million in fiscal year 2001—but have not yet obtained such funds.

EPA and stakeholders did not agree on the need for other legislative changes. For example, EPA did not agree with the executive director of the organization representing small businesses on the need for further legislative authority to protect such businesses. The agency maintains that its administrative reforms aimed at removing small waste contributors from lengthy settlement negotiations, protecting them from litigation, and adjusting their settlement costs on the basis of their ability to pay provided these businesses with ample relief. The executive director acknowledged that these reforms were helpful but said that some member businesses still report incurring high legal costs that threaten their financial viability. Therefore, these businesses would like the liability protection and other benefits of the reforms established in law to make them less discretionary and further reduce costs.

EPA and stakeholders also differ on how much liability relief should be extended to parties that conduct cleanups under state programs. In general, officials representing industry and the states explained that the fear of being held liable under the current Superfund law deters parties that would voluntarily clean up sites

under state programs, especially brownfield sites.<sup>6</sup> EPA has maintained that it cannot provide parties that clean up a site under a state program with full relief from Superfund liability. But the agency can provide these parties with assurances that it no longer has any interest in the site unless it presents an imminent and substantial endangerment to public health or the environment in the future. The industry and state officials believe that this qualified relief from liability is not sufficient to overcome barriers to cleanups and that a legislative solution may be necessary.

Several bills that would exempt various parties from liability and therefore would limit the potential sources of funding for cleanup costs have been introduced in the Congress in recent years. While some proposed bills to reauthorize the Superfund program would reinstate the expired Superfund taxes, others would not. The Congress has not passed any of these bills.

### *Conclusions*

EPA claims and stakeholders agree that the Superfund program is working better and that, at least collectively, the administrative reforms have played some part in this improvement, but the agency has not measured the impact of most reforms. This limits the agency's ability to determine how well the reforms are working and where it may need to adjust its reform efforts. EPA's ability to better measure the results of its reforms could be further limited if the agency does not obtain important data and input from the responsible parties that are conducting a majority of cleanups, as well as other key stakeholders, such as community and environmental groups. Furthermore, without sustaining the most important reforms and ensuring that all regions are implementing them to the maximum extent possible, the agency is not assured that it is fully achieving potential benefits, such as saving significant cleanup dollars and cleaning up sites more quickly. Therefore, as the agency updates its internal review of the reforms and develops a reform strategy, it has the opportunity to consider ways that it could better (1) measure the results of the most important reforms and (2) verify that it does not have a problem with inconsistent regional implementation for some reforms.

### *Recommendations*

To achieve the maximum benefits possible from the Superfund administrative reforms, the Administrator, EPA, should direct the Assistant Administrator for Solid Waste and Emergency Response, who manages the Superfund program, to address, in EPA's internal review and update of the reforms, ways in which the agency can:

- cost-effectively obtain additional data—for those reforms with the greatest potential for improving the program—that would help it better assess the reforms' results, including continuing to pursue authority from OMB to solicit input from private parties and other key stakeholders on the success of the reforms, and
- target incentives or other strategies as necessary to sustain the implementation of some reforms and better understand whether regional variation in their use reflects inconsistencies that need to be addressed.

### *Agency Comments*

We provided copies of a draft of this report to EPA for its review and comment. EPA's comments are reproduced in appendix IV. EPA said that it would evaluate our recommendations and include them in its Superfund reforms strategy, as appropriate. However, EPA had three principal concerns about our findings. While we acknowledge the agency's position on these issues, as discussed individually below, we continue to believe that our findings were soundly developed and fairly presented. Therefore, we did not change our report in response to these concerns. Specifically:

- The agency regards all 62 reforms as important and believes that they have improved the program, even if the precise results of many cannot be measured. EPA said that it had designated 20 of the 62 reforms as fundamental because they had the biggest impact, individually, on the program, but that many of the remaining 42 reforms work together with the fundamental reforms to improve specific aspects of the program, such as remedy selection. We had already noted in the report that the agency considered all reforms to be important and beneficial to the program and that the agency believed certain reforms worked together to improve the program, even though the agency could not measure their individual contributions to the improvements.
- The agency disagreed with our finding that several of the reforms it designated as fundamental have not produced measurable outcomes. The agency also stated that it is difficult to measure progress toward certain goals, such as greater fairness

<sup>6</sup> State voluntary cleanup programs offer parties incentives, such as state liability protection, to voluntarily address waste sites.



in the program and lower litigation costs, but there are a number of indicators of this progress. In addition, EPA said that it has been unable to obtain the authority from OMB to survey private parties on the reforms' accomplishments. In assessing these accomplishments, we asked the agency to provide us with any data that it had to demonstrate results. We took these data and used two criteria to designate whether the data represented output or outcome performance measures: (1) the standard definition under the Results Act that an output measure counts activities undertaken while an outcome measure assesses the results of a program activity compared to its intended purpose, and (2) the extent to which the performance measure directly assessed progress toward or achievement of EPA's stated goals for a reform. Subsequently, we found that our designation of EPA's performance measures as measuring either activities conducted or results achieved was consistent with the way the agency itself characterized them in its issued work plan for Superfund, generated in response to the Results Act. Furthermore, we had already acknowledged in the report some of the difficulties the agency faced in measuring progress toward the reforms' goals and attempting to obtain authority to ask stakeholders for important data that the agency needed to measure the reforms' results.

- The agency maintains that it has sustained a high level of commitment to implementing the reforms. Furthermore, the agency stated that the trend data cited in the report indicating possible declines and regional variation in the implementation of some reforms over the past several years do not demonstrate a decrease in the agency's commitment but could reflect the impact of other factors. These include factors such as annual differences in the types and number of cleanup activities being conducted in a particular region, or an overall decline in the cleanup workload as more sites progress through the cleanup process. These factors could also include ones that the agency cannot control, such as different levels of interest among stakeholders in using community advisory groups or technical assistance grants. We had already acknowledged in the report that the trends showing variation in implementing the reforms could be due to a number of factors. One of these factors was not, however, an overall decline in the cleanup workload. As we point out, the agency itself had admitted that such a decline could affect reform accomplishments in the future, but does not explain the decrease in accomplishments over the past several years. Furthermore, our point is that without good performance data, the agency cannot know if certain trends indicate implementation problems that the agency needs to address or are due to factors outside the agency's control. We showed that when the agency has obtained data from stakeholders on the reforms' accomplishments, it has learned valuable information about implementation problems and taken subsequent action to address them. Therefore, we believe that by focusing on the most critical reforms and significant variation in their implementation and verifying the root cause of this variation, the agency could achieve similar improvements in these reforms.

In addition to these overall comments, EPA provided technical and clarifying comments that we incorporated in the report as appropriate.

Unless you announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies of the report to appropriate congressional committees and interested Members of the Congress. We will also send copies of this report to the Honorable Carol M. Browner, Administrator, EPA; and the Honorable Jacob Lew, Director, Office of Management and Budget, and we will make copies available to others on request. Please contact me at (202) 512-6111 if you or your staff have any questions. Key contributors to this report are listed in appendix V. Peter F. Guerrero Director, Environmental Protection Issues.

Senator INHOFE. The current Administration has testified before Congress, using in my opinion, exaggerated claims and misleading rhetoric to prevent bipartisan supporters from enacting meaningful Superfund reform. Just last fall, our witnesses with us today, Tim Fields, stated in testimony, and I'm quoting now, "EPA has significantly changed how the Superfund program operates through three rounds of administrative reforms which have made Superfund a fairer, more effective and more efficient program as a result of the progress made in cleaning up Superfund sites in recent years, program improvements resulting from the administrative reforms, there is no longer a need for comprehensive reform."

However, the GAO stated in its recent report, and I'm quoting again, "EPA cannot directly link the majority of its reforms to improvements in the program."

This flatly contradicts the statements that have been made by the Administration. And I really believe that we're going to have to have comprehensive Superfund reform. And I do know this, that when the Administration changes, if it changes the way that I would prefer and the way that Senator Lautenberg would prefer, I would think that we would have a chance at having comprehensive reform.

But if we start cherry picking, taking out these areas that should be in one big bill, I think it's going to make it that much more difficult for the ultimate reform. So Mr. Chairman, I look forward to today's dialog on brownfields. And I'm also looking forward to further discussions on comprehensive reform of Superfund.

Senator CHAFEE. Thank you, Senator.

Senator LAUTENBERG.

**OPENING STATEMENT OF HON. FRANK R. LAUTENBERG,  
U.S. SENATOR FROM THE STATE OF NEW JERSEY**

Senator LAUTENBERG. Thank you very much, Mr. Chairman. I'm pleased that after months of hard work that we have produced a bipartisan plan that will clean up and redevelop the abandoned sites known as brownfields. I listened to the Senator from Oklahoma and he and I, I'm pleased to hear that he wants a Democratic Administration. He said that we both agree that we need change here.

Senator INHOFE. I appreciate your new position, then.

[Laughter.]

Senator LAUTENBERG. Senator Inhofe, I think, is going to be giving me a big going away party. And wouldn't you be better off to save comprehensive Superfund review for that date, and I'll leave my notes and everything so you can work off those.

But I agree that comprehensive Superfund reform is necessary. We might differ on which items need reform. But nevertheless, I think it's appropriate for review. However, honestly, I think that what we see in front of us, a bipartisan bill, and I thank Senator Chafee and Senator Smith, Senator Baucus, for their hard work on this legislation.

This is cosponsored by Senator Helms and Senator Kennedy because I think it's fair to say that people are agreeing on the need for doing something now. Getting brownfields into play, stop letting these sites lie fallow and non-productive, and a blight on the communities that they're in. Not only do we miss the positive effect, but we also create a negative effect.

So I'm hopeful that we can proceed with this. And again, I salute the Senator from Oklahoma's interest in full review, I do.

Mr. Chairman, brownfields threaten the health of our citizens and the health of our economy. And as I said, they're eyesores. They lead to abandoned inner cities and discouraged morale and increased crime and loss of jobs and declining tax revenues.

I was born in one of those cities in New Jersey that had a glorious industrial past, Paterson, New Jersey. Alexander Hamilton had a presence there, lots of good things happened there, in those days.

But now, they've got brownfields sites, as does Hackensack, and I could list all the communities in New Jersey. We have a distinguished mayor from Elizabeth who's going to be in the next panel. And that city, too, had an incredible industrial past, with Singer Sewing Machine and great companies producing jobs for the residents.

But a lot of sites are laid fallow now. And Elizabeth's had a fantastic success in establishing a retail site on what was contaminated soil at one point. We have had to provide a turnpike exit for them for the traffic and the interest that was generated.

So if we clean up brownfields, we curb urban sprawl, we curb the loss of farm land and we curb the increased traffic and air pollution and loss of historic districts and older urban centers. We prevent that from continuing and we revitalize those places. And once they're cleaned up, made useful, they represent tremendous potential and new jobs and a cleaner environment. Now that we have a bipartisan plan in front of us to achieve those goals, we ought to move on ahead.

S. 2700 provides critically needed funds to assess and clean up abandoned and under-utilized brownfields sites. It provides legal protection for innocent parties, people who go into these sites with the full intent of doing something productive. And they ought to be protected and not open to exposure that is far greater than any possible reward that they might get.

So we want to take care of the contiguous property owners, invite them to participate, prospective purchasers and innocent landholders. This legislation also provides for funding and enhancement of State cleanup programs, including limits, where appropriate, on enforcement by the Federal Government at sites cleaned up under a State response program. But allowing the Federal Government to come in where a site poses a serious threat. This provides a balance of certainty for prospective purchasers and developers.

Additionally, this bill creates a public record of brownfields sites, enhances community involvement in site cleanup and re-use, and generally provides for deferral of listing eligible sites on the NPL if the State is taking action at the site. So we avoid having to enlarge that list, which is cumbersome, effectively being worked on, but quite an assignment to deal with.

Mr. Chairman, this bill promises a new focus on revitalizing downtown areas, which will reduce urban sprawl, lower tax rates, protect park land, open space. And coming from the most densely populated State in the country, I understand the importance of protecting open spaces. We know from experience that cleaning up brownfields produces positive results. We just look at our successes over the past few years. Grants from EPA to aid in cleaning up brownfields sites have helped generate more than 5,800 jobs and about a billion in revenue.

But more remains to be done, as we'll soon hear from our witnesses. Brownfields successes benefit everybody, environmentally, economically. And that's why this legislation has strong support from both Republicans and Democrats. Mr. Chairman, in the 1960's, this country turned its attention away from downtown areas, started focusing on the suburbs. And we see now what we've got, our highways are clogged, there are overcrowded airports, in-

creased pollution because people have to travel ever larger distances. It's time to turn that trend around, revitalize our cities and our rural areas. That's what this legislation is attempting to do.

So I welcome our distinguished witnesses, again, especially the mayor from one of my own home towns in the State of New Jersey. Mr. Bollwage, the Mayor of Elizabeth, knows very well that I lived in a few communities in New Jersey, as my father and mother struggled to make a living during the depression years by owning a little store here and a store there, and not rarely ever succeeding. But I got to know the towns, and I guess it was a precursor to my running for office 1 day, because I can claim about 12 towns as my hometown.

[Laughter.]

Senator LAUTENBERG. So we thank you, Mr. Chairman. Mr. Chairman, I look forward to working with all the members of the environmental community to move this bill through legislative process onto the President's desk. And I commend you for kicking this off.

Senator CHAFEE. Thank you, Senator.

Senator BAUCUS.

**OPENING STATEMENT OF HON. MAX BAUCUS,  
U.S. SENATOR FROM THE STATE OF MONTANA**

Senator BAUCUS. Thank you very much, Mr. Chairman.

Mr. Chairman, we don't have very many days left of session. I very much hope that we can get this brownfields bill through markup here, committee on the Floor, passed and signed. There are a lot of people in our country, as we know, wonder why in the world can't Congress do something that makes a difference to me here at home. There are brownfields needs, pent-up demand all across the country. They're in your State, Mr. Chairman, in Rhode Island, they're certainly in my State, Montana, and all over.

And there are instances where community leaders, private and public sector, worked hard to put all the pieces together, different people volunteering and committing different resources to develop a brownfields site. They can't do it. They can't do it because we haven't cleared up the liability question and we haven't passed legislation that basically enables people at home to do what they want to do.

I understand that there are differences within the legislation. Not a lot. I think they are differences we could frankly work out. And a good indication of that is this is so bipartisan, I guess 15-18, Republicans same number of Democratic Senators. There is strong support on both sides of the aisle. And people want this.

Now, I also know that some members of this Senate, and I understand it, think perhaps this should be linked to a larger Superfund reform, I understand that, Senator. I think it's important to remind ourselves we've been trying to pass comprehensive Superfund reform for four Congresses in 7 years. We haven't done it yet. I'm not so sure we're going to do it quickly.

And my really basic belief is that we get too hung up around here, wrapped around the axle, and linking too much together. It's like we're trying to make a perfect world or no world. Of course, we all know the more we try to do that, the more we do nothing.

A, you can't let perfection be the enemy of the good, second, everything isn't really linked that much. We should take things one by one as they come up.

So I hope that we can pass brownfields legislation. The time is here. And then we can take up Superfund, comprehensive Superfund reform, the rest of Superfund and debate it on its merits. And sometimes measures pass, sometimes measures fail. That's the democratic way, that's the process.

But we have such a responsibility here to do something that is so needed. I'm thinking now of a community in my home State, Lewistown, Montana, it's called Brewery Flats, where just so many different groups have contributed to help clean up a site. It's a railroad site, switching tracks, I won't say a yard, because it's a small town. But all kinds of people have come forward with new ways to help. The Society of American Foresters provided trees and shrubs, school kids planted hundreds this last spring. In addition, the local community and some of the private sector have volunteered their contributions.

But they're stuck. They can't convert this abandoned railroad site into something that's viable for the community because of the liability problems. I plea, frankly, to the good sense of all of us to just kind of keep open minds and come together and pass something that's, you know, it's not perfect, but it's good. And good here is a lot better than nothing.

I'm also reminded of an experience of mine this last weekend in Montana. We in Montana are in pretty significant dire economic straits. Our per capita income is down at the bottom of the barrel, we rank first in the Nation in the number of jobs per household, because people just have to have that many jobs to make ends meet. Times are not good.

And so I decided, what the heck, I would hold this economic development conference in Great Falls, Montana, this last weekend. I decided to really try to do my doggonedest to make it right.

One of the most important components is totally apolitical. I went overboard to make sure the Republican Governor, Republican senators, the Republican leadership, as well as the Democratic leadership in the State legislature was there, equal billing or no billing. This was totally non-partisan, totally. And I made sure I said, anybody who wants to make a political statement, I'm cutting them off at the knees. Nobody's going to make anything that's at all political.

And I tell you, you cannot believe how, the energy and enthusiasm in this conference that finally, finally, finally, we in Montana may be starting something that's going to work, all together. My view is that frankly, in matters like this, Superfund, shouldn't blame anybody, nobody should take credit, we should just do it. The time for blame and credit is elections. Once people are elected, just get the job done.

And we're all elected here. This is not a campaign, but just get the job done. The job is to pass some legislation that's going to help a lot of people locally do what they want to do. I just strongly urge us to do it.

Other issues will come up next year. Who knows who's going to be our President, who knows what's going to be elected to what of-

fices. That's next year. Let those problems take care of themselves next year. This is this year. This is now. And there's not a lot of time left. And I very much hope, Mr. Chairman, that we can get it done.

Senator CHAFEE. Thank you, Senator.

The Senator from Iowa would like to introduce a member of the second panel. In respect to your time, I'll allow you to do that now, although Mayor Daniels will be speaking at a later time.

Mayor—Senator Grassley.

[Laughter.]

**STATEMENT OF HON. CHARLES E. GRASSLEY,  
U.S. SENATOR FROM THE STATE OF IOWA**

Senator GRASSLEY. First of all, thanks to the committee for allowing a non-committee member to do this. Like Senator Lautenberg, I'm happy and honored to introduce a distinguished mayor of my State, the mayor of Des Moines. It's Iowa's capital city and our largest city. And the birthplace of Senator Inhofe, and Inhofes still live there as well.

And to also support the legislation, and I've already cosponsored it, but I can reaffirm my cosponsorship of it and my support of it. I think Mayor Daniels and the City of Des Moines have done a very good job at promoting economic development, especially excelling at the job of utilizing and redeveloping brownfields space. Currently the city is in the process of redoing a downtown area for redevelopment as an urban village, the River Point West project. The mayor will elaborate on that.

He is here testifying before the committee not only for his own beliefs, but also for the National Association of Local Government Environmental Professionals. I'm proud to be a cosponsor of this legislation, and I think brownfields development improves the quality of life for everyone. And revitalizing these abandoned properties enhances the character of downtown areas, increases tax revenue, creates jobs, reduces health and environmental threats and preserves open spaces.

I'm going to put the rest of my statement in the record, Mr. Chairman, so you can move on quickly. But thank you very much, and I thank Mayor Daniels for coming, not only to represent his professional organization, but also for the work he does as mayor of Des Moines. Thank you.

[The prepared statement of Senator Grassley follows:]

STATEMENT OF HON. CHARLES E. GRASSLEY, U.S. SENATOR FROM THE STATE OF  
IOWA

Thank you, Mr. Chairman, and other members of the committee, for the opportunity to come before you to introduce the distinguished Mayor of Des Moines, Preston Daniels, and to voice my support for the Brownfields Revitalization and Environmental Restoration Act of 2000.

Preston Daniels is the mayor of the capitol and largest city in Iowa. Mayor Daniels and the City of Des Moines have done a good job in promoting economic development. They have especially excelled at the job of utilizing and redeveloping brownfield space. Currently, the City is in the process of cleaning up a downtown area for redevelopment as an urban village, the Riverpoint West project. I am sure that the Mayor will elaborate more on this effort. This afternoon, however, he is here testifying before the committee on behalf of the National Association of Local Government Environmental Professionals.

I am proud to be a cosponsor of this bipartisan legislation. Brownfields development improves the quality of life for everyone. Revitalizing these abandoned properties enhances the character of downtown areas, increases tax revenue, creates jobs, reduces health and environmental threats, and preserves open space.

Throughout my state, communities are interested in, or have utilized the Brownfield program to assess and clean up abandoned areas. I have had the opportunity to visit many of the sites and have heard from numerous Chambers of Commerce regarding their interest in future assessments and clean-up initiatives.

This legislation would increase the amount of Federal money available for these cleanups. It would also encourage developers to focus on previously used properties instead of undeveloped land by limiting the liability faced by these potential land developers and purchasers. Many pieces of valuable property in Iowa sit untouched and unrealized because of the liability risk they pose.

Furthermore, this legislation takes a common sense approach by empowering states. The states would have significant regulatory control of brownfield development while limiting Federal involvement in projects to only those cases with serious problems. This will protect the environment and cut through the Federal red tape that leaves brownfield sites untouched.

Thank you again for allowing me to introduce the distinguished Mayor of Des Moines and for voicing my support for this legislation.

Senator CHAFEE. Thank you, Senator Grassley.

At this time I would like to introduce our first witness. Testifying on behalf of President Clinton is Mr. Tim Fields, the Assistant Administrator of EPA's Office of Solid Waste and Emergency Response.

Thank you, Mr. Fields, for appearing before the subcommittee this afternoon. And I would ask that you limit your testimony to 5 minutes, and also limit the members' questions to one per round, since we do have a full afternoon.

Welcome, Mr. Fields.

**STATEMENT OF TIMOTHY FIELDS, JR., ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY**

Mr. FIELDS. Thank you, Mr. Chairman. It's a pleasure to be here with you and other members of this committee and subcommittee. It is truly a pleasure to be here with other witnesses who will be coming in the panels after me to talk about S. 2700.

It's a pleasure to appear again before the subcommittee, particularly to discuss the targeted bipartisan brownfields bill. We regret that our testimony did not arrive until today. And we will obviously be ready to respond to any questions about that testimony that this subcommittee may have.

We've waited a long time, Mr. Chairman, for this day. Not since the 103d Congress have we had the opportunity to discuss America's bipartisan brownfields legislation with the Senate. I particularly want to thank you, Mr. Chairman, Senator Lautenberg, Senator Baucus, Senator Smith and others who have worked hard to come together to bring together this bill, a good bipartisan brownfields bill.

And we congratulate you on the 40 cosponsors that you have already attained for this bill.

The Clinton Administration has been in the forefront of encouraging the cleanup and redevelopment of brownfields for the last 5 years. The Administration's brownfields initiative is targeted toward working with communities to safely clean up and redevelop contaminated brownfields properties. The Administration is com-

mitted to providing the tools that communities need to address the problem of abandoned, contaminated brownfields properties.

On behalf of the Clinton Administration, I commend the members of this subcommittee and the committee overall for your bipartisan efforts to develop a good, solid brownfields bill, S. 2700. The Clinton Administration supports S. 2700. We appreciate the efforts that you have gone to in developing a bill that addresses the concerns of American communities. S. 2700 authorizes grants and loans to identify, assess and clean up brownfields properties. We particularly appreciate the flexibility given to EPA and communities in implementing those grant programs.

The bill also provides liability protection for prospective purchasers, innocent landowners and contiguous property owners. We feel these provisions will do a great deal to encourage the cleanup and redevelopment of brownfields properties across America.

I want to thank you for working with us to meet our concerns on the issue of finality. As you can imagine, the Administration feels very strongly about the important role of Federal enforcement authority in providing a consistent, nationwide safety net to protect public health and the environment. This Federal safety net is the fundamental cornerstone of Federal environmental statutes.

We appreciate the additions to the bill that require States to publish a public list of cleanup sites before application of the Federal enforcement bars is being authorized. In addition, we support the requirement that States enter into a memorandum of agreement with EPA or be working toward adopting minimum State cleanup program criteria before receiving program funding. I am pleased that the Administration can support this bill. However, we do believe that there are improvements that can be made to the bill, and the Administration stands ready to work with this committee to effectuate those improvements.

The Administration continues to believe that States should be required to demonstrate that their programs satisfy minimum program criteria before Federal enforcement bars apply. Further, there is currently no mechanism in the bill to ensure active public participation in State cleanups or provide assurance through State review or approval that site cleanups are adequate.

We also believe that the provision that requires States to publish a public list of sites should be strengthened, although we applaud that being there, by having the list updated more frequently and establishing a link between the enforcement bar and the sites that are published on the list.

Further, the provision that governs the circumstances which Federal enforcement is appropriate qualifies or modifies the imminent and substantial endangerment standard in most environmental laws. To avoid costly and unnecessary litigation we believe would be preferable to retaining the current CERCLA Section 106 standard of imminent and substantial endangerment.

Finally, brownfields range from huge former industrial facilities to the thousands of abandoned small corner gas stations across America. We think brownfields legislation should encourage the cleanup and redevelopment of a full range of contaminated brownfields properties.



Mr. Chairman, the Administration has identified other modern technical issues that we will be communicating to the committee as you proceed to markup. We do support this bill. We look forward to working with you and other members of the subcommittee to enact good bipartisan brownfields legislation this year that the President can sign.

We thank you for the opportunity to appear today. And I'll be pleased to answer any questions that you might have.

Thank you very much.

Senator CHAFEE. Thank you, Mr. Fields, and thank you for the Administration's support of this bill.

As we heard Senator Baucus give an impassioned plea to pass this legislation this year, and we also heard from Senator Inhofe some of the impediments to the passage this year, my question would be, to what extent do you think the Administration would go to address some of the non-brownfields issues of Superfund reform, if we did need to make some progress on some other elements of Superfund legislation? Would the Administration be inclined to lend a helping hand to some of those other elements, non-brownfields elements of the Superfund legislation, natural resources damages, and some other areas of the law that might be important for passage this year of brownfields legislation?

Mr. FIELDS. Mr. Chairman, we think you and this subcommittee are on the right course. We believe that targeted brownfields legislation is appropriate. We do not support comprehensive reform of Superfund law. We do not believe that there is a need for comprehensive reform at this time. We believe the administrative reforms that have been implemented have changed this program in a fundamental way.

The General Accounting Office report that Senator Inhofe mentioned, for example, we read it completely differently than he did. The June 8th, 2000 report from General Accounting Office, the quote said that EPA claims and stakeholders, namely industry, State officials, local government officials and community representatives all agree that the Superfund program has improved and the administrative reforms have collectively contributed to this improvement. Those stakeholders all agree that the reforms have improved the operation of the program, the Superfund program is working. That is what the report says.

So we do not believe that comprehensive reform of Superfund legislation is necessary. We believe that targeted brownfields reform like embodied in S. 2700 is something we do support. We are also, though, willing to look at, as we've said in the past, other areas of reform, not necessarily in this bill. We've in the past supported liability relief for generators and transporters of municipal solid waste. We have supported as an Administration the reinstatement of the Superfund taxes.

So there are other elements of Superfund legislation that we would be willing to look at. But we do not in any way support comprehensive reform of the Superfund statute like some would espouse. We do not support changes to remedy selection. We do not support changes to natural resource damages and other issues that people would want to raise. We believe that targeted brownfields legislation that this committee is supporting and bringing before us

today is the way that this Administration believes the Congress ought to go.

Senator CHAFEE. Thank you, Mr. Fields. I'll followup with it. Just hope you keep an open mind as we proceed on that course. And it seems like your course is set pretty solidly in opposition to addressing some of the other elements of Superfund legislation. But perhaps as we go forward, we could have some discussions on that.

Senator LAUTENBERG.

Senator LAUTENBERG. Mr. Chairman, in the interest of time, I think Mr. Fields' statement was fairly concise. We are pleased to have Administration support. We would encourage Energy in that connection.

And I pass now so that we can get to the next panel.

Senator CHAFEE. Thank you. Senator Baucus.

Senator BAUCUS. Briefly, Mr. Chairman, thank you very much. One, I want to thank you very much, Mr. Fields, for your help in Libby, Montana.

Mr. FIELDS. You're welcome, sir.

Senator BAUCUS. As you well know, there is a horrendous asbestos problem in Libby. And EPA's done a great job.

Mr. FIELDS. We thank you, Senator, for your leadership in the situation in Libby, Montana. You've done a great job. That, as you know, is a national issue, and we applaud the leadership you've shown there.

Senator BAUCUS. I appreciate that. I throw the bouquets back.

[Laughter.]

Senator BAUCUS. EPA has been just super. Sometimes people complain about the Federal Government. I always go back to particularly what EPA's doing in Libby. It's first rate. I know you've heard me mention Paul Paranard, your man on the ground there. He's aces.

Mr. FIELDS. Thank you.

Senator BAUCUS. I don't know anybody who works in public service who I can compliment more highly than Paul. Those of you in the audience, Paul Paranard is the on the ground coordinator in Libby, Montana. He's a guy who's got tattoos, he's got a ring in his ear and he comes to meetings with his black shirt on, and people look.

[Laughter.]

Senator BAUCUS. He's so smart. And he knows his issues so well, and he's so committed and dedicated, he bleeds for Libby people, the solution there. It's just made a huge impression, a positive impression of people in EPA. You're to be commended.

Could you just go into a little more, very briefly, Mr. Fields, and I agree with you, that administrative reforms, the Administration has put and set, particularly EPA with respect to Superfund, have really gone a long way to "reform" Superfund. Just flesh it out a little bit, please.

Mr. FIELDS. Sure, Senator Baucus. The reforms have allowed us to move over the last several years from, almost 4 years ago now, we were doing on the average of about 65 construction completions a year. We've now gone to 85 a year for each of the last 3 years,

and we're targeted for 85 again in fiscal year 2000. That is a tremendous increase in the pace of cleanup.

So the program is working faster. There's a 20 percent reduction in the time it takes from a site going on the Superfund list until construction is complete.

Costs have been reduced by 20 percent in the Superfund program. We've saved more than \$1.4 billion in cost remedies by the institution of updating remedies based on new science and technologies over the last several years. We've done a lot to provide more fairness to the program by allowing de minimis parties, more than 21,000 being settled out and given contribution protection. We've implemented reforms to make sure our remedies are looked at. The National Remedy Review Board has looked at remedies and saved tens of millions of dollars in Superfund cleanup at many sites across the country.

So by all standards, I think, and the General Accounting Office report I referred to, the stakeholders who were interviewed for that report all agree that the Superfund program has been fundamentally changed. It is a program that is working now. The Administration is working with all the stakeholders involved, States, local government, the communities, the private sector, to effectuate cleanups. More than 70 percent of the cleanups are still being done by responsible parties.

So by all accounts, we think the Superfund program is on good foundation, working well. Therefore, we do not need a comprehensive fix to the Superfund statute.

Senator BAUCUS. I appreciate that. Would the President, in your judgment, would EPA recommend that the President sign this bill if it were presented to him unamended?

Mr. FIELDS. That's a tough question, Senator. Obviously, hypothetically, we'd say we support the bill. We don't know what's going to happen in the House. My understanding is the House is drafting brownfields legislation, targeted brownfields legislation as well. I assume there will be some tweaks between the House and the Senate as you all come together regarding a bill that would come out of the Senate and the House.

But yes, we do support this bill, and it is the kind of bill we would recommend the President sign. We have endorsed other bills in the past, like S. 20, that Senator Lautenberg was heavily involved in, H.R. 1750. But yes, this is a bill that we do support. And we would want to work with this committee during markup to try to make some improvements to it. But it is the kind of bill that we believe embodies what the Clinton Administration has been about in the brownfields arena for the last 5 years.

Senator BAUCUS. Thank you, Mr. Fields. Appreciate it very much.

Thank you, Mr. Chairman.

Senator CHAFEE. Thank you, Senator Baucus.

Thank you, Mr. Fields, for your testimony and your participation in the drafting of this bill.

I do understand we have some votes, two votes. We will adjourn for a short break and indulge your patience and shall return.

[Recess.]

Senator CHAFEE. Again, I apologize for any discourtesy in the break. You have the solace of knowing there were important voters on Medicare and Social Security lock box, now safe for future generations.

I'd like to invite the second panel to the table. The second panel includes State and local officials. Mayor Preston A. Daniels of Des Moines, previously introduced by Senator Grassley. And he'll present testimony in behalf of the National Association of Local Governmental Environmental Professionals. And Mayor Bollwage of Elizabeth, New Jersey, introduced by Senator Lautenberg, will testify on behalf of the United States Conference of Mayors. And Jan Reitsma, Director of Rhode Island Department of Environmental Management, will offer the State's perspective.

Welcome, gentleman. And let's start with Mayor Bollwage, please.

**STATEMENT OF HON. J. CHRISTIAN BOLLWAGE, MAYOR,  
ELIZABETH, NEW JERSEY**

Mayor Bollwage. Thank you very much, Senator Chafee. I'm Chris Bollwage, the Mayor in Elizabeth. I am pleased to appear today on behalf of the U.S. Conference of Mayors, a national organization representing more than 1,050 U.S. cities with a population of 30,000 or more. Within the Conference, I'm on the advisory board for the organization as well as the cochair of the brownfields task force.

Mr. Chairman and Senator Lautenberg and other members of the committee, appearing here this afternoon is a great honor in order to help facilitate the bipartisan brownfields proposal, the Brownfields Revitalization and Environmental Restoration Act of 2000, S. 2700. At the Conference's 68th annual meeting in early June, we adopted a new policy statement conveying our support for S. 2700. I've attached a copy of the statement to my testimony.

This legislation offers the best opportunity for successful legislative action in the Senate this year, and hopefully final enactment of the legislation this year. It seems that it was just the other day that I appeared before you, Senator, and urged the panel for a bipartisan agreement. You've done exactly that, and we applaud your efforts in crafting S. 2700.

And Senator, as you remember, I had to leave in a hurry that day. And I apologize for my hasty retreat. I was appearing before my local PBA for their endorsement that evening for an election that I had 3 weeks later, which I was successful in. So as you know, all politics is local, and I really had to get back for that PBA endorsement. I thank you for your patience in letting me come back.

Senator CHAFEE. Welcome.

Mayor Bollwage. Mr. Chairman, we believe the legislation before you is the right way to get started on these issues. It delivers much needed financial tools, and it sets forth a policy framework that we believe will help further local and State efforts to recycle America's land. We believe the time has come to enact these changes into Federal law, and let's begin by reporting this legislation promptly to the Senate and take it up on the entire Senate Floor.

Specifically about S. 2700, why we the mayors believe it warrants broad Senate support, this legislation addresses the three key issues: resources, liability relief and further clarification of State and Federal roles at brownfield sites we've identified in our most recent statement before this committee. Senator, you have my specific comments on these areas, and my full statement. I would just like to underscore the point that S. 2700 addresses these issues in a manner that has garnered support from both public and private sectors.

Mr. Chairman and members of the committee, let me conclude by again reiterating our support for your efforts, Mr. Chairman, in acting in a bipartisan way in this legislation. The legislation of this committee and your staff have worked extremely hard to craft a legislative package. And as the mayors of this Nation, we thank you.

It is time to move the Nation to the next level on brownfields. Congressional action on these important issues is long overdue. And I thank you for this opportunity to appear before the committee here today. Thank you, Senator.

Senator CHAFEE. Thank you, Mayor. Thank you for your support. Us mayors have to stick together.

Mayor Bollwage. That's right, Mayor.

[Laughter.]

Senator CHAFEE. And I now welcome Mayor Daniels.

**STATEMENT OF HON. PRESTON A. DANIELS, MAYOR, DES MOINES, IOWA**

Mayor Daniels. Mr. Chairman, and I do want to thank you for that earlier promotion of my Senator to the ranks of Mayor.

[Laughter.]

Senator CHAFEE. Yes, duly noted. It will help him with his decisionmaking in the future, I'm sure.

[Laughter.]

Mayor Daniels. I am pleased to be here today to testify on behalf of the National Association of Local Government Environmental Professionals, or NALGEP. NALGEP represents 135 localities, including many of the leading brownfields communities in the country, such as Providence, Trenton, Richmond, Chicago, Los Angeles, Salt Lake City, Dallas, Cuyahoga County and Des Moines, just to name a few.

NALGEP has been actively working with local governments in brownfields issues for many years. My written testimony provides details on a range of Federal initiatives or incentives that are needed to promote brownfields revitalization in local communities across America.

In this verbal testimony, I wish to send the straightforward message that local governments need Federal brownfields legislation. And S. 2700 provides a valuable, positive approach that meets those local needs.

The City of Des Moines is impacted by brownfields. And we seek a partnership with the Federal Government to revitalize these brownfields and create new opportunities for our citizens. With the business community, EPA and other key Federal and State agencies and civic groups, we are turning our brownfields into water

fronts and mixed use developments, new manufacturing and open spaces and parks.

Revitalizing our brownfields can keep Des Moines a livable city, empower distressed communities and avoid the sprawling of the region into the areas of precious farmland.

Des Moines' priority now is the revitalization of an area called River Point West. River Point West is a 300 acre site in Des Moines' central business district. It's situated on the Raccoon River in a census tract with 38 percent poverty rate. A number of industrial activities that have taken place at River Point West over the years and terrible flooding have left the site polluted and unproductive, right in our downtown.

Des Moines will revitalize this place into a mixed use urban village, with 1,000 residential units, 850,000 square feet of office and retail space, parks and open space along the river. The city has performed a phase one assessment and is ready to perform phase two assessments on another 175 acres.

When completed, this revitalization will create 1,000 jobs and increase the tax base twelvefold to over \$140 million. But Des Moines needs much more help to get the River Point West revitalization done. Mostly we need Federal resources for cleanup to leverage the other public and private sector moneys that we will raise for this site. And the same story can be told in localities across this Nation.

S. 2700 provides important tools that will help local communities revitalize their brownfields, including critical funding for localities for site assessments, cleanups, grant and local cleanup loan funds. Liability protection for innocent parties, and authority for State brownfields programs to take the lead in brownfields cleanup, while preserving EPA's ability to provide a safety net for the public health and environment in those exceptional circumstances.

Together these provisions represent a strong legislative approach that will go a long way toward meeting the needs of America's local communities in this top revitalization priority.

NALGEP wishes to raise two other important issues for local communities. First, Federal legislation should ensure that brownfields funding can be provided to localities to address brownfields impacted by petroleum, or by lead and asbestos in buildings. Under current law, these pollutants are excluded from Federal brownfields assistance. These contaminants are some of the most difficult problems facing local communities. Abandoned gas stations, housing with severe lead paint hazards, and buildings contaminated with asbestos blight communities across America. Brownfield sites with these pollutants should be eligible for funding and for liability from relief for innocent parties.

Second, I want to emphasize the importance of bringing together all the Federal agencies that can play a role in local brownfields. Brownfields are not an EPA only issue. HUD, the Economic Development Administration, the Department of Transportation, the Army Corps of Engineers and other Federal agencies will all contribute important resources to local brownfields projects. Congress should strengthen the ability of these agencies to help communities like Des Moines.

For example, Des Moines seeks to work with the Corps of Engineers to clean up contamination and prevent the flooding in the

River Point West area. I understand that both the Administration and Senator Chafee have put forth proposals to enhance the role of the Corps in brownfield cleanup along the Nation's waterways. These are positive and needed proposals, and we believe it will make a big difference for our city and many other communities.

In the words of Senator Robert Kennedy, give me a place on which to stand and I shall move the earth. The people of America, the people of our community, people in this Congress are standing up on this Nation's brownfields, in our streets, in our neighborhoods, and we're shouting, let's move the earth. Let us take these places that have been abandoned, let us turn them back into jobs, businesses and parks, and homes. Let us show that we can bring businesses and people and environmental groups and city hall and the Federal agencies together toward a common, exciting goal.

I thank you very much.

Senator CHAFEE. Thank you, Mayor Daniels, for your support and for your constructive criticism for the areas that still need to be addressed, and your enthusiasm for the bill. Well said.

As we mentioned earlier, the three witnesses so far have been singing the praises of the bill. We tried to get some witnesses in opposition. But really, the bill by itself has pretty much unanimous support. The problem is going to be addressing it in the framework of comprehensive Superfund reform and whether we can just address brownfields on its own. So that's the struggle that lies ahead.

Mr. Reitsma, welcome. How was the trip down?

Mr. REITSMA. It was quick.

[Laughter.]

Senator CHAFEE. Good. Welcome. What time did you get here?

Mr. REITSMA. Just about an hour before the hearing.

Senator CHAFEE. Good. Welcome.

#### **STATEMENT OF JAN H. REITSMA, DIRECTOR, RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

Mr. REITSMA. Thank you again, Mr. Chairman. My name is Jan Reitsma, I'm the Director of the Rhode Island Department of Environmental Management. I bring greetings from the Ocean State and regrets from Governor Lincoln Almond, who was not able to be here himself to express his strong support for this bill, Senate Bill S. 2700, on brownfields.

I would like to start by commending you, Mr. Chairman, and the other members, for crafting a brownfields bill that has strong bipartisan support and that addresses many of the concerns that we have had in the State with the Superfund program. We're also very proud in Rhode Island to see that the tremendous efforts invested in cleaning up this country's contaminated sites by our late Senator, John Chafee, is being continued by this subcommittee and by you, Mr. Chairman.

In Rhode Island, as in other States, we view brownfields as a challenge, as well as a tremendous opportunity. Governor Lincoln Almond has consistently promoted brownfields redevelopment as a key economic as well as environmental priority.

There is a great need to clean up many old industrial sites in the States that present a risk to the environment or to public health. But the cleanup of these sites has become much more than that.

It is our chance to restore urban communities, revitalize their economies, improve their quality of life, make better use of existing infrastructure, as well as preserve open space, our working landscapes and the diverse character of our communities. In short, brownfields redevelopment is one way to get real about smart growth.

By way of background, Rhode Island adopted its own site remediation program in 1993 essentially because the traditional Superfund approach simply did not allow us to address sites as quickly as we were discovering them. We established a relatively flexible process for identifying, investigating and remediating sites which quickened the pace of our cleanups.

Then in 1995, Governor Almond introduced the Industrial Property Remediation and Reuse Act, or the Rhode Island Brownfields Bill, which was passed into law with overwhelming support by the legislature. This gave us new tools, such as the ability to negotiate settlements, including covenants not to sue, with parties who were willing to perform the cleanup.

Our State law not only provides liability relief to innocent parties, but also allows us to settle with responsible parties who are willing to cooperate. As a result of these statutory and additional regulatory changes, 48 sites have been cleaned up and redeveloped, 532 acres have been returned to productive use, 1,010 jobs have been created, and \$76.9 million is being generated annually in property and income taxes. Now, we are a small State, but for a small State, those are big numbers.

And although we are proud of this success, we know that we could be doing a whole lot better. And we are very excited that this bill promises changes at the Federal level that will in fact help us do our job better. Too often, we still find that the flexibility and the liability relief we can offer as a State just is not good enough for certain parties who are scared away by the double jeopardy issue, the possibility that EPA may decide after the fact that the agreement reached with the State is not good enough.

This bill addresses that by providing for finality of the State's decision subject to certain criteria the State program has to meet. We believe those criteria are reasonable.

Together with the liability relief provisions for innocent parties, this finally should put to rest the double jeopardy issue, provide certainty instead, facilitate and expedite the completion of projects that are currently underway, and attract many more participants to our program, so we can initiate, cleanup and have restoration at many more sites.

This is, we believe, by far the most important thing the Federal Government can do at this time to help us States do our job.

Another key aspect is that the bill recognizes the importance of brownfields, not just for commercial redevelopment, but also as sites that can be restored as natural resource areas, buffers that protect our water quality, greenways, public access for fishing and other water recreation, and urban parks. Such restoration can contribute significantly to the quality of life and revitalization of our urban communities. And brownfields present opportunities that are otherwise very scarce, unaffordable or both in most urban communities these days.



But since these restoration projects do not typically generate a revenue stream that can be used to pay off loans, it is important that grants are available to fund or at least jump start them. The funding proposed by this bill is modest, we believe, but it is a very important step toward realizing the full potential of our brownfields programs.

On the topic of funding, this bill proposes to make loans and grants available not just for investigation and inventories, but also for the actual cleanup work. This too, in our experience, can make a critical difference between a project going forward or languishing for many more years.

I should mention in fairness that we have received very significant funding from the Federal Government which has been critical to our success. We have been lucky to have received grants to be designated in Providence as a showcase community.

As I said, it's critical to our success. But the importance of that success and the importance of that assistance will increase exponentially when the provisions of this bill become law, attracting more private sector participants, supporting the role of local governments, so they can partner more effectively with us at the State, allowing funds to be used for actual cleanup and making funds available for greenspace restoration projects in addition to commercial development.

In short, in Rhode Island, we strongly support Senate Bill S. 2700. It does not solve all the issues and concerns that have been raised by the Superfund program, nor should it have to. It would give us in Rhode Island and in other States much needed additional backup tools, flexibility to carry out our brownfields program at the State and local levels. These are improvements that can be made now. They should not be held back, we believe, pending more comprehensive Superfund reform.

On behalf of Government Almond and all of us in Rhode Island who work on environmental protection and economic revitalization, I urge you to support this bill. And again, thank you for the opportunity to testify.

Senator CHAFEE. Thank you, Jan, for coming all the way down. Appreciate it very much. Thank you for your support and your testimony.

Mayor Daniels, are you here on a day trip also?

Mayor Daniels. Day trip, and it will be midnight by the time I get back home.

Senator CHAFEE. Well, thank you. That's the sacrifice you made to be here.

Mayor Bollwage, did you come by train again this time?

[Laughter.]

Mayor Bollwage. I did, Senator. I understand from your staff person, Senator, that Senator Lautenberg has used my hasty departure as a reason for speeding Amtrak service to Washington.

[Laughter.]

Senator CHAFEE. Well, you were successful in your election. That's important.

Mayor Bollwage. Thank you, Senator.

Senator CHAFEE. Senator Lautenberg, any questions?

Senator LAUTENBERG. Thank you.

Mr. Reitsma, do you know that your name is a fairly popular one in the part of New Jersey that I was born in, an old Dutch colony?

Mr. REITSMA. I'm aware of that, yes.

Senator LAUTENBERG. There was a dairy named Reitsma's. How did we let you get to Rhode Island?

I listened to the testimony in the other room. I apologize to the two mayors, my friend Mayor Bollwage and Mayor Daniels, for not being in the room when you were testifying. But I did hear what you said.

I was curious about, what changed, Mayor Bollwage, in terms of the mayors' view on financing? There wasn't the enthusiasm in the past that I saw for the brownfields legislation as it was originally developed. And now, it's being fairly enthusiastically supported in the Conference of Mayors.

Mayor Bollwage. Senator, on the funding, this legislation provides communities with considerable flexibility, which is important to the Nation's mayors in securing resources for both assessments and cleanup activities, allowing communities to seek site-specific resources or to support continuing local programs. It also provides the authority to access both grants and loan capitalization funds to meet the varying conditions.

It also provides assurances that the distribution of these funds will serve more urban as well as rural needs, Senator. I have put this in my testimony in the long form. But I think the funding, to the Nation's mayors, by providing various means to communities to seek assistance directly, or in partnership with other communities in their area through the State, is another strong mechanism that this bill provides.

It also provides flexibility to communities to use a portion of these resources to monitor the health of the populations in affected areas and monitoring the enforcement of institutional controls. Senator, I've also been appointed to a committee that is trying to develop a brownfields policy school at Rutgers University. And Dr. Michael Greenberg asked that I speak last week at the National Academy of Medicine and Science, to talk exactly about this issue and how brownfields redevelopment could affect the health of the urban communities. And this bill addresses those areas in the funding portion of the bill.

Senator LAUTENBERG. That's good. I understand that you've made non-commercial uses of some of these former sites, a couple of athletic fields. We focused on some of these types of uses in S. 2700 and tried to address concerns raised by local governments. Do these special provisions allowing non-commercial, non-conventional uses of these sites add something to the value of this legislation, in your view?

Mayor Bollwage. That's another reason the Nation's mayors are strongly supportive of this, Senator, is that this bill also facilitates the opportunity to create more open space and create more recreation. In the City of Elizabeth, we took a former plastics sites, using Green Acres money on a State level, and have converted it into two new little league fields. We've taken a waterfront parcel that was vacant for 50 years and have built two new soccer fields. We have taken another site and are currently in the process of putting state-of-the-art basketball courts next to the soccer fields.

So recreation combined with this brownfields plus Green Acres funding in our State will allow more of our cities to create open space opportunity for the residents of New Jersey.

Senator LAUTENBERG. Mayor Daniels, some people have the impression that brownfields is largely a northeastern, urban issue. And I don't want to suggest that Des Moines is a small, rural city. It isn't. But it is in a significantly rural State. Do you think that it's fair to say that this wouldn't have the same value to communities away from the industrialized urban centers of the country as they would in those locations? Does it mean much to a place like Des Moines and surrounding areas to be able to convert some of these sites now that are not doing much or not doing anything except maybe scaring people? Is there a value in your kind of community to having these sites able to be converted under the scheme that we've outlined in S. 2700?

Mayor Daniels. I'd say definitely yes. I think that's a very well-preserved misnomer, that communities the size of Des Moines and communities smaller than Des Moines would not seek value or find value in this kind of legislation. On the contrary, here we have urban sprawl that will rival many communities. We have the positive aspects of being able to utilize legislation like this early before our sprawl can become so wide, consuming, that there's no value in dealing with urban sprawl any longer.

We can take over 300 acres in downtown Des Moines, which currently is not being utilized, simply laying there and growing weeds, we have a chance to make that downtown living destination. As I've said, maybe we're not a New York City, we may not have a 24 hour city, but by gosh, we can do an 18 hour city that will thrive and do very well. And this helps deliver that to us.

It helps again in ways that were just mentioned in integrating activities that we have. We have a waterway, we have a major park, a lake that we're revitalizing that sits directly across from this area that I'm talking about developing. So we can make an integration and move that directly across the river with the open space into a living area and retail area.

Senator LAUTENBERG. And Mr. Reitsma, I don't know whether you had talked about a grant that was recently given by the Rhode Island Economic Development Corporation and your agency. There was a million dollar grant set up for statewide revolving loan fund to provide cleanup money.

What kinds of things are you looking to do with those funds? Are they largely commercial, conventional uses? What kind of uses are planned for that?

Mr. REITSMA. Right now, our focus has been largely on the commercial redevelopment. But as I mentioned, we are very excited by the possibility of broadening the scope of this program to include things like greenspace projects as well. We have along the Winnasquitucket River, which is a very urbanized watershed in Rhode Island, some serious problems with older industrial sites that have been abandoned for some time, places like you referred to that people may be scared to go to these days.

We have had a greenway project along that river for some time that needs to go through these sites. We would be very happy to be able to use some of these moneys, both to do a commercial rede-

velopment, but to combine that with some of these greenspaces, greenways projects, and having the flexibility to use the moneys for both purposes is very important to us.

Senator LAUTENBERG. Mr. Chairman, I've concluded with questions. But it seems to me that there are so many opportunities to obtain value from these funds with the kinds of uses that I'm sure even the group of us here have not thought about. I've seen it used so effectively in Hackensack. I don't know, Mayor Bollwage, whether you know the retail site on the Hackensack River. Boy, this place, it was nothing.

And I know these areas intimately, I pass that way all the time. And now, 400 people working there, and shoppers coming in and life, and revenues coming to the city and good prices available, by the way, to the residents that otherwise might not be obtained if there wasn't such good competition.

With the help of these mayors, Mr. Reitsma and others who have spoken thus far, I'm encouraged the record will reflect that this S. 2700 is a really good way to approach the problem, and to offer a solution that can be fairly quickly accomplished and at the same time add dimensions of life quality to these communities, whether rural or urban, that make a difference in the way people view not only their town, but themselves and the whole environment surrounding what amounts to community participation.

So I thank you very much, all of you. Thank you, Mr. Chairman.

Senator CHAFEE. Thank you, Senator Lautenberg. Thank you, Mr. Reitsma, Mayor Daniels, Mayor Bollwage, for your testimony and the time you took to be here in support of the bill. Senator Baucus said it's rare we get to do something so positive such as this. And he said he pleaded with you to pass it this year, and that's where we're going to put every bit of our energy into doing, to help you and your communities and States. So thank you once again.

Mayor Daniels. Thank you, Senator.

Mayor Bollwage. Thank you very much.

Senator LAUTENBERG. There's a copy of the legislation for Mayor Bollwage, on the high speed rail service.

[Laughter.]

Mayor Bollwage. Thank you, Senator. I'll see you back home.

Senator CHAFEE. We'll take a 2-minute break while we change panels.

Welcome. Thank you for taking your time to be here. We look forward to your testimony.

This third panel consists of Mr. Kevin P. Fitzpatrick, President of AIG Global Real Estate Investment Corporation, on behalf of the Real Estate Roundtable. Welcome. Mr. Alan Front, Senior Vice President of the Trust for Public Land. Welcome. Mr. William McElroy, Vice President of Zurich U.S. Specialties, on behalf of the American Insurance Association. Welcome. And Ms. Vernice Miller-Travis, Executive Director of the Partnership for Sustainable Brownfields Redevelopment. Welcome.

Let's start with Ms. Travis. Welcome.

**STATEMENT OF VERNICE MILLER-TRAVIS, EXECUTIVE DIRECTOR, PARTNERSHIP FOR SUSTAINABLE BROWNFIELDS REDEVELOPMENT**

Ms. TRAVIS. Thank you, Mr. Chair. Thank you so very much.

Good afternoon. As you said, my name is Vernice Miller-Travis, and I currently serve as the Executive Director of the Partnership for Sustainable Brownfields Redevelopment based in Baltimore, Maryland.

The Partnership for Sustainable Brownfields Redevelopment is a national, multi-State, non-profit organization comprised of the leading organizations and institutions involved in the brownfields redevelopment effort. As the focus of the brownfields redevelopment effort moves from the Federal Government to States and local communities, the partnership will serve as a resource for governments, community groups, corporations and developers as we move into the new millennium.

I also serve as a member of the National Environmental Justice Advisory Council, where I chair the Waste and Facility Siting Subcommittee. Through my participation in NEJAC, I have worked closely over a period of several years with EPA's Office of Solid Waste and Emergency Response in the development of this national brownfields action agenda. I was there at the beginning, and I'm proud to say I am still there as a partner with EPA.

In my previous appearances before this subcommittee, I represented the Natural Resources Defense Council and the environmental justice community. Today I'm pleased to add my voice to the chorus of those who support this legislation. I would also like to take this opportunity to introduce Ms. Donele Wilkins, Founding Director of Detroiters Working for Environmental Justice. Ms. Wilkins is one of the leading environmental justice advocates in the State of Michigan, and serves on the Detroit Brownfields Redevelopment Authority. She is submitting her own comments about this legislation for your consideration, representing the perspectives of community residents at or near brownfield sites.

Today I am truly pleased to be able to speak affirmatively about S. 2700 and its provisions, as opposed to speaking against the legislation which has been my posture in all my previous appearances before this body.

I do have a few areas of concerns, but I do want to say that I feel a level of excitement at being able to finally, in my 7 years of work around comprehensive Superfund reform and brownfields, of finally being able to join in with the efforts that Congress has made to support brownfield redevelopment and revitalization. This is really a new day and we've turned a corner, and I thank you so much for the opportunity presented in this legislation.

My general review of the legislation in consultation with members of the board of the Partnership for Sustainable Brownfields Redevelopment as well as consultation with several other brownfields stakeholders across the country is that S. 2700 is a well crafted, useful, creative approach to brownfields redevelopment. That being said, I want to raise a few general concerns, most of which are contained in my written testimony. But one in particular, my biggest area of concern is the blanket delegation of enforcement authority

for brownfields redevelopment to State voluntary cleanup programs.

The legislation assumes that all States have the resources to implement a vigorous voluntary cleanup program that can assume the enforcement responsibilities that EPA has heretofore held. For a variety of reasons, this assumption is not accurate. All States are not equal in terms of the resources available to them to implement and maintain strong voluntary cleanup programs.

Some States, as a matter of political philosophy, are opposed to vigorous enforcement actions that they believe will diminish the interests of private developers in purchasing and redeveloping brownfields sites within their States. In these States, local communities, especially low income and communities of color, are facing an uphill battle when trying to get State and local agencies to balance economic development considerations with the need for environmental and public health considerations.

To address this particular concern, I suggested the legislation include language that States would have to demonstrate to EPA the existence and effectiveness of a State voluntary cleanup program before the State could receive delegated enforcement authority for a brownfields program. Through this process, the State would need to certify that they indeed have an established program of corrective action, to clean up and redevelop brownfields sites. The State would also need to demonstrate that their corrective action program has been and can be implemented consistently across the State in all communities, regardless of race, ethnicity or economic status.

Time does not permit, but I can tell you stories about where that is not in fact the case in many, many States, my home State of New York being one of them.

Title II of the bill, Brownfields Liability Clarifications, is perhaps the most creative and forthright legislative attempt to address innocent third party and prospective purchasers in the chain of liability while maintaining and preserving the principle of strict joint and several liability, a phrase which I'm happy to say, as I move on to a new stage in my career, soon I will never have to mention that term again, strict joint and several liability.

The proposed amount of the appropriation of Federal moneys to accompany this bill is a welcome increase in proposed Federal brownfields dollars, as is the definition of eligible entities who can access these dollars and the expanded definition of what is an eligible recipient activity or use. The section of the bill entitled mechanisms and resources to provide meaningful opportunities for public participation and mechanisms for approval of a cleanup plan are especially appreciated as delineated sections of this legislation.

Last, the language included in section 128, brownfields revitalization funding, which basically talked about greenspaces, open spaces, park land, is a welcome addition to the legislative thinking about what constitutes a beneficial re-use of a brownfields site. It also affirms the perspective that a beneficial re-use can be something other than a commercial or industrial re-use of a brownfields site.

Additionally, Subsection B, the extent to which a grant will meet the needs of a community, is the first legislative attempt to codify

the needs of local communities as a paramount consideration in the brownfields redevelopment arena. We are truly, truly thankful for many of the provisions that are contained within this bill.

I have specific comments, section by section, which you and your staff will go through, I'm sure. But I just wanted to add one more piece in terms of the actual body and language of the bill. Section 129, State response programs, Subsection 1 on enforcement and public record talks about the need of using institutional controls and how they can be a good part of a brownfields program.

I suggested somewhat of a change in the language, that the public record shall identify whether or not the site on completion of the response action will be suitable for unrestricted use and if not, shall identify the institutional controls relied on in the remedy and how the institutional controls will be enforced and monitored over time.

Communities have profound concerns about the blanket use of institutional controls and the fact that from one administrative change to another at the gubernatorial or local legislative level, no one is there to monitor the use of institutional controls and how in fact they are enforced over time. Lest we forget, Love Canal had an institutional control and a deed restriction which no one ever saw and no one ever promulgated to protect those communities.

Last, on the question of the need for comprehensive Superfund reform, as a precursor to legislative action on brownfields, I believe that that is a misguided thought at best. Currently in New York State, there is a absolute legislative morass that has engulfed the Governor, the State legislature, the development community and the environmental community in not being able to break through a balance between the need for brownfields legislation versus a complete review of the Superfund program in the state of New York and the State's voluntary cleanup program.

I do not believe that they will be moving through that morass into legislative action. Hopefully they will look to the efforts that you have made here as a direction that they can go in to see their way clear.

The environmental justice perspective on brownfields redevelopment is that these sites must be viewed as a component of a broader economic and community revitalization strategy, a strategy that seeks to rebuild and revive these long dormant communities into healthy, safe and economically viable areas. That is what we mean by the term sustainable brownfields redevelopment.

Back home in our respective communities, we are witnessing brownfields programs and projects that promote economic opportunities for entities other than the long suffering residents of these communities and the small business owners in our Nation's most economically, environmentally deprived communities, where the bulk of the brownfields sites are located.

We are also witnessing successful brownfields projects that have mushroomed into wholesale gentrification of our communities. For example, in Jersey City, New Jersey, with the Newport Mall, development in downtown Detroit, and in fact, in my own home community, the 125th Street commercial corridor where Disney now has been brought to 125th Street, and oh, we are not all happy.

We believe that real economic development is that which enhances the quality of life of community residents and improves economic opportunities for community businesses. We believe that the issue of sustainable brownfields redevelopment is crucial to pursuing a different path toward community redevelopment and revitalization in this new century. Sound and sustainable brownfields redevelopment is one of the critical issues of our time, and this bill takes a significant step in the right legislative direction.

Finally, it is clear to me that the crafting of this bill was achieved through major bipartisan give and take and consensus building. Please know that your staff efforts and your Congressional leadership are very much appreciated, and we look forward to your continued support on brownfields redevelopment and community revitalization.

Thank you for the opportunity to share my thoughts about S. 2700.

Senator CHAFEE. Very good thoughts, Ms. Travis, indeed. You're knowledgeable on this issue.

Ms. TRAVIS. Thank you.

Senator CHAFEE. How long have you been working on it?

Ms. TRAVIS. Probably my entire professional career on community economic development and revitalization. I'm from Congressman Rangel's congressional district in New York, I lived there for 40 years and now I live here in Prince George's County, Maryland. So my life has sort of been the issue of brownfields redevelopment.

Senator CHAFEE. Good. Thank you very much for your participation and support.

Ms. TRAVIS. Thank you.

Senator CHAFEE. Let's hope we can get it passed this year, so you won't have to talk about joint and several—

Ms. TRAVIS. Strict joint and several.

Senator CHAFEE. Yes, strict joint and several liability.

[Laughter.]

Senator CHAFEE. Mr. McElroy.

**STATEMENT OF WILLIAM MC ELROY, VICE PRESIDENT,  
ZURICH U.S. SPECIALTIES**

Mr. McELROY. Thank you, Mr. Chairman. It's an honor and a pleasure to be here today to speak in support of S. 2700. I'm grateful for that opportunity.

My name is William McElroy. I'm here as a representative of the American Insurance Association.

AIA is a trade association of 370 major property and casualty insurers in both the commercial and personal lines area who account for over one-third of the property and casualty insurance marketplace in the United States.

I'm also the Vice President of Zurich U.S. Specialties, a leading specialty lines insurer, where I'm responsible for the environmental risk profit center. One aspect of our environmental risk underwriting practice involves providing insurance coverage to real estate developers.

Some of our customers are actively engaged in brownfield redevelopment as part of their business strategy. Member companies of Zurich U.S. have insured hundreds of brownfield and other envi-



ronmentally sensitive real estate projects from Massachusetts to California. These are varied in scale from former gas stationsites that are now restaurants to the privatization of former military facilities, such as the current civilian redevelopment of the Presidio in San Francisco.

While we are proud of the work on these projects, they are but a fraction of the tens and hundreds of thousands of sites around the country. It is likely that the first projects to be successfully accomplished are the most obvious and potentially most profitable ones. The key provisions of the bill provide targeted funding and administrative support to help State and local governments identify, classify and market the more problematic properties, sites that might otherwise go unnoticed to developers.

In some cases, with grants providing direct funding for cleanup activities in local governments, it will permit projects to succeed when the economics of the project would not support funding remedial measures necessary to protect human health and the environment.

Title II of the bill appears to us to be an appropriate and measured response to recognizing new site owners and their willingness to provide new values to the community. It further draws the distinction between owners of tainted properties and the unfortunate neighbors of contaminated properties whose land has been impacted by these environmental conditions. Moreover, it provides clarification to the concept of innocent ownership already embraced within the intent of previous legislation amending CERCLA.

This should help would-be buyers of brownfield properties acquire stable financing to implement their plans. Great care has been taken in the crafting of the bill to ensure that this protection is not provided to people who knew or should have known of site contamination have not taken proper action when these conditions became apparent. This will ensure that sound and informed judgment be employed by the sponsors of redevelopment projects.

Title III of the bill makes the provision for funding insurance trust funds or pools to foster brownfields redevelopment. I must note that there is already a growing private sector market for environmental insurance available to real estate developers. While we recognize that the private insurance industry does not have all the answers to this problem, there is a history of public sector entry into the field through so-called LUST Trust funds that is highly questionable.

In addition to stifling the private insurance marketplace, some of these programs have operated in a manner that lacks the very financial responsibility they seek to foster. In the implementation of this provision, great care must be taken to assure that Government-funded insurance programs are not permitted to compete or discourage a vibrant private insurance market.

We believe this bill can help unlock the market value hidden in certain environmentally impacted sites and in so doing, these otherwise valuable properties can re-enter and remain in the stream of commerce where they will generate the economic growth on which our communities depend. And we applaud your bipartisan efforts in making this a reality through S. 2700.

Thank you.

Senator CHAFEE. Thank you very much, Mr. McElroy.  
Mr. FRONT.

**STATEMENT OF ALAN FRONT, SENIOR VICE PRESIDENT, THE  
TRUST FOR PUBLIC LAND**

Mr. FRONT. Thank you very much, Mr. Chairman, and I am Alan Front, representing the Trust for Public Land.

If I may, I'd like to cast some appropriate laurels back across the witness table to the two of you sitting on the dais. In our work in Rhode Island, on the previously mentioned Winnasquitucket Greenway and elsewhere, we have seen, Senator, your commitment to exactly the principles of environmental justice, of brownfields cleanup, of open space protection that this legislation embodies.

And in our long work in New Jersey, from the highlands to the meadowlands to the pinelands to all the other lands, and the refuges and the inner city of Newark, we have long recognized, Senator Lautenberg, that your commitment and your care and your effectiveness in defense of both the built environment and the natural environment is really unparalleled.

So we're not surprised, but we are certainly gratified that the two of you, working with Senator Smith and Senator Baucus and your wonderful staffs, have put together legislation that we're very pleased to embrace today.

Much has already been said about the importance of protecting, reclaiming brownfields, the salutary effects of brownfields restoration on local economies, the need to pass S. 2700. So if I may, I'd like to associate myself with the remarks of almost everyone else who has spoken thus far today.

And then I'd like to offer a brief and somewhat different perspective as the conservation green hat at the witness table today, a perspective that's born of our longstanding commitment to the urban sector, our Green Cities initiative, which is focused on brownfields and other urban parks work, our founding and spinning off of one of the Nation's first brownfields recycling non-profits. And from that perspective, from those labors in the vineyard of brownfields, we have seen the inexorable connections between open space protection, development and redevelopment and brownfields reclamation.

We have had deep and longstanding experience in brownfields. In fact, as we've worked in the urban sector more and more of the properties that we've come across and looked to protect have had some sort of brownfield association. And so again from that perspective, I have submitted a more detailed statement and also would like to offer for the record, I feel a bit like Senator Joe McCarthy, but I have here a letter with the names—

[Laughter.]

Mr. FRONT.—of a number of other supporters who are not yet on your list, but hopefully will be added after this hearing.

But having submitted that material, I'd like to touch briefly upon just three major points that I hope that you will consider as you consider S. 2700 and as we hope you advance it toward enactment.

First, from an oil tank farm in Pensacola, Florida to an abandoned rail yard in Santa Fe, New Mexico, to the derelict sports stadium outside of Cleveland, Ohio, there are a number of

brownfields, a host of brownfields across the country whose most appropriate disposition is ultimately as park land. Many of you all know that there have been a number of local bond issues and voters continue to vote to fund acquisition and development of those sorts of places. We have seen private philanthropy increase. The environment committee just considered a couple of weeks ago legislation known as CARA that would provide a meaningful Federal commitment ongoing for open space protection.

But what has been more elusive as we have had all of these tools for open space conservation, what's been more elusive is the formula for assessment and cleanup of brownfields. We have long hoped for some Federal mechanism, a fitting Federal investment in brownfields cleanup, in brownfields assessment. And especially with its commitment to open space protection and to underserved communities, S. 2700 certainly answers that prayer.

Second, I'd like to touch upon sprawl for just a moment. There are certainly a number of brownfields that are most appropriately redeveloped to add to housing stock, to add to commercial vitality, to bring jobs and homes to people in communities that are brownfields affected. And those are the most appropriate uses for those properties.

At the same time, beyond the cleanup environmental value, there's another environmental value to those restoration and redevelopment projects. And that environmental value is to help stem the tide of sprawl. According to the Department of Agriculture, since I began talking to you over these last 4 minutes, according to the yellow light, 20 some odd acres of greenspace have vanished. Since you began this hearing this afternoon, almost 800 acres of greenspace have been laid claim to by development. Maybe appropriate development, but development that maybe could have been refocused elsewhere, other places where infrastructure was already in place, other places that already been developed once and would be best developed twice.

That's what this bill encourages. And so again, S. 2700 provides a wonderful tool to help prevent sprawl.

Last, I know the saying is, it's the economy. I guess that saying has another word, but it's not accurate or appropriate to mention. It is the economy. Brownfields cleanup is about economic growth. And in fact, conservation of brownfields is about economic vitality, bringing a new face and new life to disadvantaged communities. And we have seen it over and over again. We've seen it in the Los Angeles River, we've seen it on the Miami River, the Portland, Maine waterfront and the Portland, Oregon waterfront. All of these places, conservation of previously contaminated or abused or abandoned or idle properties has brought new economic vigor to communities that previously lacked exactly that sort of benefit, exactly that sort of conservation boost to their own community life.

And so, for reasons of sprawl control, for reasons of economic investment, for reasons of economic and social justice and certainly from that green hatted perspective, for reasons of open space conservation, the funding mechanisms, the tools that S. 2700 provides are a very welcome addition to the tool box that already exists. It's a wonderful Federal joining of the partnership that already exists. And we appreciate all of your help in making it happen.

Thank you very much.

Senator CHAFEE. Thank you, Mr. Front, for your kind words and your support.

Which Cleveland sports stadium is a brownfield site, out of curiosity?

Mr. FRONT. It's the Richfield Coliseum, which was a huge tower of asbestos and concrete that we knocked down and added, with the Park Service's help, to the Cuyahoga National Recreation Area, now it's restored as meadow.

Senator CHAFEE. Thank you.

Mr. Fitzpatrick, welcome.

**STATEMENT OF KEVIN P. FITZPATRICK, PRESIDENT, AIG GLOBAL REAL ESTATE INVESTMENT CORPORATION AND CHAIRMAN, ENVIRONMENTAL POLICY ADVISORY COMMITTEE, THE REAL ESTATE ROUNDTABLE**

Mr. FITZPATRICK. Thank you. Thank you, Chairman Chafee and Senator Lautenberg.

As you mentioned, I'm Kevin Fitzpatrick, I'm President of AIG Global Real Estate, which is a member company of American International Group, the insurance and financial services company. Today I'm here speaking on behalf of the Real Estate Roundtable.

Its members have long advocated Federal policy reforms that will facilitate, rather than undermine, the efforts of local communities across the country to advance smart growth. The Brownfields Revitalization and Environmental Restoration Act of 2000, or S. 2700, includes just these kinds of policy reforms. We have done a good job in this country of encouraging recycling in the area of consumer goods, such as plastic, bottles and paper. In our view, it is time that we made the same national commitment to recycling our Nation's blighted urban and rural brownfields properties. S. 2700 provides the real estate industry and its partners in State and local governments with a detailed road map for doing just that.

Among those blighted properties the ones that often suffer the greatest market stigma are those with actual or simply perceived environmental issues. With the help of the economic and regulatory incentives included in S. 2700, many of these properties can be recycled to serve the commercial, residential, retail and recreational needs of the information age and its so-called new economy.

Today, companies that acquire certain environmentally distressed real estate also end up acquiring the market stigma and the uncertainties associated with Superfund cleanup liability. In the past, our members have testified before the subcommittee that innocent parties that act responsibly in the redevelopment of these sites should not be punished by Federal laws.

The real estate industry is fully prepared to take the business risks associated with any prudent real estate project. But for the most part, however, the development community is not prepared to take the kind of litigation and liability risk presented by many brownfields projects.

In short, when Congress passed the Superfund law in 1980, nobody contemplated the possibility that the law would actually serve as a barrier to cleanups, cleanups that real estate companies might otherwise be willing to pursue at their own expense. S. 2700 will

go far to correct the unintended consequences of Federal policy-making.

A growing number of States have initiated voluntary cleanup programs, VCPs, that provide participants with authoritative comfort regarding the limits of their residual risk of cleanup liability under State law. S. 2700 will strengthen these programs in a number of ways, both legally and financially.

In our view, the greatest asset this legislation will offer State VCPs is the ability to extend the zone of comfort many now offer brownfield redevelopers, so that it responds to liability concerns under the Federal superfund law. S. 2700 includes a provision that will, in most cases, reassure participants and State voluntary cleanup programs that their State approved cleanup is not likely to be second guessed by Federal authorities. This so-called finality assurance is crucial, not only to potential buyers and sellers of brownfield properties, but to their financial partners as well.

Finally, S. 2700 builds on the valuable work of the Environmental Protection Agency in developing administrative reforms in the area of prospective purchaser and adjacent landowner protection. The prospective purchase and adjacent landowner provisions in S. 2700 will provide self-implementing and legally enforceable protections for would-be brownfields redevelopers.

I hope I have made it clear that with so many other investment options available at any given time, this prospect of open-ended liability under the Superfund remains a deal killer. If, however, the Superfund law were changed along the specific lines of S. 2700, so that the potential liability of would-be purchasers and redevelopers of brownfields became better defined, the real estate community would be far more ready, willing and able to invest private capital into these sorts of projects.

Thank you.

Senator CHAFEE. Thank you, Mr. Fitzpatrick. It's been 20 years since Congress passed the Superfund legislation. And as you said, who could have envisioned it would be a barrier, potential barrier to redevelopment of these sites. But here we are 20 years later, and we're going to try to get it done, as I said.

Senator LAUTENBERG. any questions?

Senator LAUTENBERG. Just a couple of things. Mr. Chairman, if I might observe, my thanks to all of the witnesses for their testimony. I think each of the particular perspectives that you bring here are very helpful, whether it's insurance, real estate, community or the conservancy.

I know Alan Front fairly well, and I thank him for his work on finding suitable properties and matching those with suitable donors, so that the communities have done well as a result of the efforts. They can give you chapter and verse, as you heard, about sites that were cleaned up and turned into not only profitable, and I use the word profit not just in financial terms, but in terms of the community's well-being.

We've had a good time, we've worked together on several things, including some nice forest land from which you can see New York City's towers, a place called Sterling Forest. We both worked extensively up there, even preserving the timber rattlesnakes' lair, mak-

ing sure that they weren't wiped out in the process, nor did they wipe us out as we looked at them.

The focus, Mr. McElroy, coming from your particular alignment with the American insurance industry, what do you see from your perspective as the key factor in 2700 that you feel is of value to the members of your association and will in turn sell services to the community at large?

Mr. MCELROY. Well, Senator, as you know from your days in the business world, you know that the opportunity to make a business decision often hinges on very small differentials in cost and the cost of capital and how one proceeds with a specific business plan. We think that the funding that exists for certain of these projects that will get projects over the hump, which will spawn the economic development in an area, gives us the opportunity to serve our clients and do more business in communities where we may not be doing it today.

The big attractive projects go forward very quickly. And they have the native values in them to fund remediation. Some of the smaller projects in difficult areas don't have that, and you focused funding on targeting those very issues. And that we think is very important.

Senator LAUTENBERG. Well, the liability issues are very important, fixing the amount of risk that one takes. When they make an investment, not winding up with a liability that far exceeds the total value of the investment. I assume that's important.

Mr. MCELROY. A very important issue to us, Senator. And that you have clarified the notion of the innocent landowner provisions in CERCLA already. This is a further clarification. We hear a lot from our customers who attempt to borrow money to do these projects, and the efforts that you've made to hold that liability off of the truly innocent, with the stipulations that one has to do appropriate inquiry into the circumstances, is the right balance between responsibility and innocence in the process.

Senator LAUTENBERG. Mr. Fitzpatrick, we're glad to see you here, too. I know your company very well, and I know Mr. Greenberg. I remember our days at faceoff, as we might call it, Superfund liability questions. We had a couple of very interesting—I don't live to fight, but I fight to live.

[Laughter.]

Senator LAUTENBERG. I am glad to see you here, to get your perspective. We've gotten good support from the real estate community at large in addressing this issue. I don't know whether you have some examples from your industry of potential redevelopment projects of brownfield sites which have been difficult to carry through due to the funding, the fear of the unknown.

And this changes the dimension or the proportion of the sites that can be attended to, those that don't require huge investments, that aren't macro size things that make such a difference in the area that they're found in, because they're viewed as discarded sites and who cares kinds of things. Ms. Travis, you know just what I'm talking about. Because people are coming into a lot of the sites in our industrial environment and building a mini-size businesses and so forth. And the big ones just don't fit.

So what do you see in this bill that particularly, and I know I looked at your testimony, that would help particularly, be advantageous in helping some of your colleagues in the real estate business to get on with turning their skill and their expertise into creating sites that are going to be beneficial? Is there any particular thing in S. 2700 that you find?

Mr. FITZPATRICK. There sure is, Senator. I think the issue of certainty is really the question and the biggest problem that we encounter is the issue of liability. Many times it's not only us as a purchaser but also the seller and what liabilities remain with them as the seller of the property. The insurance community has been very creative in coming up with a number of products that are available on the market that I think need to be expanded further, at least market acceptance, and people feeling comfortable that the insurance companies can insure around a certain part of the liability.

But I think your bill goes a long way to removing a lot of the uncertainty, and also the issue of finality. I think finality is really critical.

We're working on a number of different projects around the country. As you know, from dealing with Mr. Greenberg, we're in the business to make money.

Senator LAUTENBERG. And he does it very well.

Mr. FITZPATRICK. He does a good job at it. Everything that we do always has a commercial orientation to it. And we see brownfields in a number of different ways, some smaller projects that need to be cleaned up, but also more and more people are feeling comfortable to take on the liability. I think the certainty contained in S. 2700 will encourage many more developers to take on the liability risks and be able to move forward. Because capital is very smart, very shrewd, has many opportunities and will move in a lot of different areas. If they don't feel comfortable in the environmental area, they just won't bother to invest.

We feel comfortable because of our experience in the insurance on the environmental side, and have made quite a bit of investments, our largest investment is an Atlantic Steel site in Atlanta. And although I'm from your home State of New Jersey, I'd like to see more done in New Jersey, but we're working in Atlanta. It keeps me up at night time worrying about the liability.

Senator LAUTENBERG. I'm sure that's the case. It's a question of whether in fact, it's not just the liability, the extent of the risk that one has to consider, but rather what are we getting ourselves into that creates a degree of uncertainty, that people just say, oh, the devil with it, we can find other, especially in times like these, we can find lots of places to put money and to do things. I thank you.

I wonder, Ms. Travis, you've had experience working in different parts of the environmental world. One of the things that I've seen, I grew up in an urban center, New Jersey, Paterson, New Jersey, and know the State so very well. I can call off city after city that's been part of the heat that people throw kind of discards to and say, oh, why bother.

Those communities, these urban centers that are largely poverty ridden and when the national highway system was created, there was an unexpected, unanticipated effect. That is, it gave people a

chance to leave the cities behind and go get the security in the suburbs and take away the income base, the real estate opportunities, etc. People didn't want to bother.

As a consequence, despair got despair. And this is one way of kind of lifting up the spirits and making a difference in the community. I'm sure you've seen it. You had your service with NRDC. And now doing what you're doing. What do you see in this bill of ours, this opportunity to take, for relatively small amounts of money, too. Interesting. You're not talking about a \$20 million land site. You're talking about something else. What do you see as our biggest attraction here?

Ms. TRAVIS. Well, unlike the first statement made by the Senator at the beginning of the hearing about the need to have comprehensive Superfund reform first in order to move this issue, I think that's one of the reasons that we haven't been able to grapple with this issue, because people cannot intellectually delineate the difference between Superfund and brownfields.

Strongly enough, it's been a huge problem within the environmental justice and environmental community, trying to get State agencies and local governments to really look at difference between the sites. What we were seeing, until this legislation and up until this very moment is a collapsing of sites that would otherwise be defined as a State superfund site, not necessarily rising to the level of an NPL, but certainly requiring very focused attention and resources to clean up and remediate before redevelopment.

And there was a rush, when EPA first sort of put out the call about the national brownfields action agenda, everyone was excited about it, because it did create the opportunity to take a new look at these sites. But what communities were finding was that in the rush to create new economic opportunity, everything was being classified as a brownfield site.

So sites that really required much more focused attention, perhaps some more extensive remediation, were given cursory remediation and then a redevelopment which continued some of the same environmental problems that existed on the site in the first place, and also promulgated additional public health considerations.

We had a devil of a time. And until this legislation, I mean, in the legislation you really go down the line and tick off what does not constitute a brownfield site. This is the first time in any of the Federal bills that have been put forward to address brownfields that such attention has been paid to clearly separating what is a Superfund site or what would be in a State voluntary cleanup program, what is a brownfield site.

I think we have to remember what EPA's original conception was is that a brownfield site is something that has limited and minimal contamination, and because it does have limited and minimal contamination, you can create all kinds of new activity with relatively little investment at the front end and low levels of remediation. You've given us a real opportunity to do lengthy issues and to really move forward in a substantive way.

And then you talked about money, a real significant appropriation of dollars to help States and local governments advance that. So you've really addressed a number of the lingering issues out there that were really unclear, out in the public sector. You've



given us some real direction and clarification. And at least from the environmental justice perspective, we truly appreciate it. We really do.

Senator LAUTENBERG. Thank you. We tried to get community participation with these TAG grants of ours. And it made a difference. When you say to an area where people's incomes are really modest, low income, and you say, well, get the community together, well, how do you do it? But if there is a \$25,000, \$50,000 investment in bringing the people together, getting the materials necessary, it makes a reality out of just a hope.

And Alan, again, having worked with you and your organization, you look at the greenspaces and we look at the green that comes from hard work, people's opportunity. Where have you seen these relationships just be almost symbiotic, where greenspace comes and the jobs and good spirit that follow? You mentioned a few before, but I'll bet there are some sites that are just specific.

When you talk about the stadium and that kind of thing, you're not talking about brownfield sites, you're talking about something much larger. How about small sites? Does the Trust for Public Land, I called it the conservancy before, I forgot the competition isn't represented here today. But have you seen or do you work with some of these smaller sites where brownfields really have a unique role to play?

Mr. FRONT. Absolutely, Senator. In fact, we've been deeply involved in a couple of economic revitalization programs in different communities where small park acquisitions are one of the keys to building the mosaic tile by tile to restore a community.

That certainly was the case in Atlanta in the Martin Luther King national historic site area, where a restoration of the entire Sweet Auburn neighborhood, one small property at a time, has actually led to an economic revival in that neighborhood. We have seen that in the community gardens of East Oakland. We have seen it in some very small but pivotal sites in some of the border towns in Texas.

So community needs range from huge economic developments like in the Chattanooga Riverfront, the Tennessee River, where cleanup and major park land and redevelopment effort along the river spawned better than a billion dollars of private investment to really change the shape of the city. But from those large scale projects down to the very smallest projects, to some extent, the tools and the dynamics are almost the same. It's just a question of whether or not those partnerships can get forged.

And because I've already agreed with everyone else's statements, I'd like to agree with Vernice's answer to her question from you, which is that in fact, there is a desperate need out there, your Section 128 dollars. There's a desperate need for a sizable investment, so that not only can there be some seed money for some of these bigger initiatives, but specifically so the next Sweet Auburn, so the next East Oakland, so that the next Los Angeles River can get cleaned up, and that process of redemption can start.

Senator LAUTENBERG. I'd like to thank all of you. Mr. Chairman, my compliments that you continue in the tradition of John Chafee, who was respected, revered and loved by so many. And his goal of

environmental improvement was the mark to which this committee often toed. Thank you for continuing in that vein.

Senator CHAFEE. Thank you, Senator Lautenberg, for your leadership on many issues, environment being one of many national issues which you're a leader on. So thank you.

And thank you, panel for your participation. Safe travels back. And we have still work ahead of us.

I'd also like to thank Lisa Hagee, Kristen Rohr and Barbara Rogers, who worked very hard on this legislation. Also Chairman Smith, who wasn't able to be here, but a critical participant in this legislation. And Senator Baucus and Roger Platt, from the Real Estate Roundtable, one of our first supporters on the day we announced the bill. And thank everybody else, who has put their oar in the water on behalf of this legislation.

Have a good evening. Meeting is adjourned.

[Whereupon, at 4:27 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[Additional statements submitted for the record follow:]

STATEMENT OF HON. BOB SMITH, U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Good Afternoon. Thank you very much Senator Chafee. I'd like to welcome the witnesses here today, particularly those who traveled some distance to be here.

As the former Superfund Subcommittee chairman, I have worked on Superfund issues for a long time. Today, we receive testimony on the first bipartisan bill amending Superfund to be introduced since the 103d Congress.

This bill enjoys bipartisan support because of the recognition that today's environmental problems cannot be addressed by yesterday's solutions and that we must strive to allow for the sustainability of our environment, our resources, and our economy in order to succeed as policymakers.

The U.S. Conference of Mayors has estimated that more than 450,000 brownfield sites exist around the country. These sites endanger human health and the environment, force alternative greenfield development, and discourage the revitalization of areas in desperate need of economic development.

Under current law, incentives do not exist to clean up and develop these sites; in fact, quite the opposite, disincentives and fear of liability prevail. Although the level of contamination at many of these sites is relatively low, and the potential value of the property may be quite high, developers often shy away from purchasing and developing these sites because of the current status of the Superfund law.

To address these disincentives, EPA developed the National Brownfields Program. This Program provides funding to assess brownfield sites, but involves a cumbersome application process, and does not address the underlying fears of liability that exist under current law. This program is a good first step; but, in order to reach its full potential, we must guide the efforts of EPA by authorizing the Program.

Addressing the fear of Superfund liability is just as important, if not more so, as providing funding for site assessments and revolving loan funds. S. 2700 provides not only funding for assessments and revolving loan funds, but for the remediation of sites and the enhancement of state programs as well. The bill includes clarifications of the liability scheme to ease and encourage the transfer of properties to those willing to clean up and develop. These clarifications protect prospective, contiguous, and innocent landowners from liability.

The bill also addresses the fear of Superfund liability by providing a final decision point for assessing liability; that decision point rests with the States. To do this, the bill restricts EPA's ability to second-guess decisions made at sites cleaned up under a State Voluntary Cleanup Program, except in limited circumstances. In addition, the bill builds on the ability of the States to clean up contaminated sites by providing that EPA defer NPL listing of a site to a State program at the request of the State.

The need for this legislation, as well as a future comprehensive reform bill, is supported by the conclusions of a recent GAO report examining the effectiveness of the reforms instituted by EPA in the Superfund program. The results found that three-fourths of the 62 reforms implemented by EPA are ineffective or unmeasurable. The

study also found that the implementation of reforms peaked in 1997 and has declined since that time, thus indicating that further action is needed.

As demonstrated by the findings of this study, there is a continuing need for reform of Superfund. I plan to work toward that end next year, however, an even more pressing need exists today. That need is to ensure the few reforms that are working continue to be implemented. Of the 7 reforms that GAO found to demonstrate positive results, 4 affect the management and cleanup of brownfields. To continue the work EPA is doing and to better guide their efforts, the passage of BRERA is essential.

Some members of the committee believe that taking brownfields out of a comprehensive reform package will jeopardize future Superfund reform. I feel that we can move forward with brownfields without compromising comprehensive reform. The funding, liability clarifications, and state finality afforded by this bill will ensure these sites are cleaned up, never becoming Superfund sites, and resulting in an improved quality of life for all of us.

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REAL ESTATE ROUNDTABLE,  
June 8, 2000.

Hon. ROBERT SMITH, *Chairman,*  
*Committee on Environment and Public Works,*  
*U.S. Senate,*  
*Washington, DC 20510.*

DEAR SENATOR SMITH: I am writing on behalf of the Real Estate Roundtable to express our members' enthusiastic appreciation for your proven commitment to the pressing national issue of brownfields development.

Congratulations are in order to all the lawmakers involved in developing "The Brownfields Revitalization and Environmental Restoration Act of 2000" (BRERA). This important new legislation would make welcome reforms to the Comprehensive Environmental Response, Compensation, and Liability Act or "Superfund" law. The bipartisan spirit in which you have worked to achieve consensus presents a model for practical and effective progress in that often divisive realm of environmental policymaking.

There are brownfields in every state—and almost every community—in this country. If enacted into law, BRERA would significantly advance the economic prospects for remediating and recycling those properties into a broad range of productive uses. The economic and regulatory incentives included in the bill would help thousands of brownfield sites across the country become vibrant new employment centers. In other cases, the cleaned-up properties would provide many communities with environmentally sound housing alternatives.

As you know, the Real Estate Roundtable's members are America's leading real estate owners, advisers, builders, investors, lenders, and managers. The Real Estate Roundtable (and its predecessor organization, the National Realty Committee) has long supported enactment of bipartisan legislation that includes meaningful incentives for brownfields redevelopment. BRERA is clearly just such a piece of legislation.

In particular, the proposed legislation would go far in assuring those parties purchasing already contaminated "brownfields" properties that they have not also acquired unwarranted Superfund liability. Such assurance is critical to successfully financing and closing on brownfields transactions. In addition, we are pleased the bill recognizes the need to clarify the innocence of those individuals or companies whose real property has become contaminated simply because hazardous substances have migrated from adjacent sites.

The legislation also includes a provision that will, in most cases, reassure participants in state voluntary cleanup programs that their state-approved clean-up is not likely to be "second-guessed" by Federal officials. This so-called finality assurance is crucial not only to potential buyers and sellers of brownfields properties but to their financial partners as well. The bill presents a welcome compromise on a very difficult policy challenge. While not as air-tight an endorsement of State primacy in this area as we have supported in the past, the provision represents substantial progress in finding a bipartisan resolution to a crucial policy issue.

We look forward to working with you, other Senate leaders and the Administration to encourage the swift passage of BRERA.

Sincerely,

JEFFREY D. DEBOER, *President and Chief Operating Officer.*

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NATIONAL ASSOCIATION OF REALTORS,  
June 8, 2000.

Hon. LINCOLN CHAFEE,  
Hon. FRANK LAUTENBERG,  
Hon. BOB SMITH,  
Hon. MAX BAUCUS,  
U.S. Senate,  
Washington, DC 20510.

DEAR SENATORS: On behalf of the 760,000 members of the National Association of Realtors, I strongly support your introduction of S. 2700, the Brownfields Revitalization and Environmental Restoration Act of 2000. NAR thanks you for your hard work in achieving a solid bipartisan bill which present a constructive, viable approach to cleaning up and revitalizing hazardous waste sites throughout the country.

NAR supports S. 2700 because it:

- Provides liability relief for innocent property owners who have not caused or contributed to hazardous waste contamination;
- Funds cleanup and redevelopment of the hundreds of thousands of our nation's "brownfields" sites;
- Recognizes the finality of successful state hazardous waste cleanup efforts.

Redevelopment of brownfields sites offers excellent opportunities for the economic and environmental enrichment of our communities. Unfortunately, liability concerns often deter real estate transactions involving properties which are or might be contaminated by hazardous waste. As a result, properties that could be contributing to the tax base of communities are left dilapidated, contributing to nothing but economic ruin.

The meaningful reforms contained in the Brownfields Revitalization and Environmental Restoration Act of 2000 will achieve cleanup of hazardous waste sites, encourage property reuse and enhance community growth. NAR looks forward to working with you in the coming months to make brownfields legislation a reality.

Sincerely,

LEE L. VERSTANDIG, *Senior Vice President, Governmental Affairs.*

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BUILDING OWNERS AND MANAGERS ASSOCIATION INTERNATIONAL,  
June 27, 2000.

Hon. LINCOLN D. CHAFEE,  
U.S. Senate,  
Washington, DC 20510.

DEAR SENATOR CHAFEE: On behalf of commercial real estate professionals nationwide, I applaud your recent introduction of S. 2700—The Brownfields Revitalization and Environmental Restoration Act of 2000. You and your fellow cosponsors have cut through a thicket of remediation issues to create a practical, bipartisan solution for America's brownfields problem. The Building Owners and Managers Association (BOMA) International strongly endorses this bill as a way to rapidly and dramatically improve our nation's cleanup efforts.

With more than 400,000 brownfields sites nationwide, our country needs to take a more aggressive approach toward resolving this issue. We believe that S. 2700 provides practical solutions to America's brownfields dilemma.

Via a relatively simple approach, the bill cuts to the heart of multiple brownfields issues. It offers reasonable liability exemptions for blameless parties, like innocent landowners, prospective purchasers, and contiguous properties. It also looks to enhance the role of states in the brownfields cleanup process. Additionally, it increases the Federal Government's commitment to solving the problem by dedicating funds solely for brownfields assessment and remediation. By encompassing so many important improvements to current cleanup law, you have made it easy for real estate professionals nationwide to support this effort.

BOMA appreciates your leadership in this demanding legislative field. We look forward to assisting you in your efforts to help clean up America's brownfields.

Sincerely,

RICHARD D. BAIER, *President, BOMA International.*

NATIONAL GROUND WATER,  
June 27, 2000.

Hon. LINCOLN CHAFEE,  
*Committee on Superfund, Waste Control and Risk Assessment,*  
*U.S. Senate,*  
*Washington, DC 20510-6175.*

DEAR SENATOR CHAFEE: On behalf of the National Ground Water Association, I would like to submit the attached letter of support for S. 2700, the Brownfields Revitalization and Environmental Restoration Act of 2000.

The National Ground Water Association thanks you for your sponsorship of this legislation and stands ready to assist to move the bill forward.

Very truly yours,

CHRISTINE REIMER, GOVERNMENT AFFAIRS DIRECTOR.

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STATEMENT OF THE NATIONAL GROUND WATER ASSOCIATION

The National Ground Water Association (NGWA) applauds the sponsors of S. 2700, the Brownfields Revitalization and Environmental Restoration Act of 2000. This bill zeros in on the principal barriers hindering the constructive reuse of abandoned and possibly contaminated sites and lays out a responsible plan to overcome these impediments.

A 1998 study<sup>1</sup> analyzing state brownfields redevelopment programs identified liability protection for innocent parties as the most important reform required for successful programs. Additionally, financial incentives and a supportive governmental attitude ranked as key factors in the success of state programs. S. 2700 brings the Federal Government into a partnership with the states, providing appropriate liability relief and adding Federal financial resources to those of state, local and private entities.

Much of the environmental remediation work ongoing in this country is being done through state clean-up programs or with state oversight. NGWA believes the financial assistance provided in the bill to state clean-up efforts and reinforcement of the respective roles of Federal and state government entities will help achieve the public health and environmental protection that is everyone's ultimate aim.

Environmental professionals are working together with planners and developers to identify land uses and remedial technologies that complement each other, meeting both land-use objectives and environmental standards.<sup>2</sup> This legislation removes some of the liability and financial issues that slow the application of existing technical knowledge to the recycling of the nation's brownfields sites. NGWA urges passage S. 2700 as expeditiously as possible.

The leading information and education provider for the ground water industry, NGWA is a not-for-profit, 16,000-member organization dedicated to providing and protecting the ground water resources. We thank you for this opportunity to submit our views on this important issue.

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<sup>1</sup> Consumers Renaissance Development Corporation, National Comparative Analysis of Brownfield Redevelopment Programs, 1998.

<sup>2</sup> Nyer, Evan K. and Lawrence S. Graves, "Identifying Synergy Between Remedial Strategies and Land Reuse," Ground Water Monitoring and Remediation, Fall 1998, pp. 61-65.

June 23, 2000.

Hon. LINCOLN CHAFEE, *Chairman,*  
*Subcommittee on Superfund, Waste Control and Risk Assessment,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Hon. FRANK LAUTENBERG, *Ranking Member,*  
*Subcommittee on Superfund, Waste Control and Risk Assessment,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Hon. ROBERT SMITH, *Chairman,*  
*Committee on Environment and Public Works,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Hon. MAX BAUCUS, *Ranking Member,*  
*Committee on Environment and Public Works,*  
*U.S. Senate,*  
*Washington, DC 20510.*

DEAR SENATORS CHAFEE, LAUTENBERG, SMITH AND BAUCUS: The Environmental Business Action Coalition (EBAC) commends you for your hard work in crafting the bipartisan bill S. 2700, Brownfields Revitalization and Environmental Restoration Act of 2000. This bill provides significant direction in planning a path forward by laying down a benchmark for cleaning up brownfields nationwide.

EBAC, which is a coalition of the American Consulting Engineers Council and represents most of the major firms working in air quality, water infrastructure and hazardous waste environmental management, has long supported reform in brownfields law and regulation. Specifically, we were pleased to see provisions in S. 2700 that takes steps toward:

- providing for state finality in brownfields clean up;
- bolstering self-certification of state brownfields programs;
- recognizing the validity of professional judgment in site assessment,
- giving the U.S. EPA Administrator flexibility in establishing standards of practice and not promulgating into law ASTM 1527-97 as the standard for site assessment; and
- supporting state and local brownfields clean up by providing increased resources through a grants program.

One of the hallmarks of this piece of legislation is the manner in which it addresses site assessment and the establishment standards of practice. The engineering community applauds your approach that does not set in law ASTM 1527-97, but rather outlines professional standards of care and practice as the basis for determining cleanup needs.

Again, you should be congratulated for your efforts. EBAC strongly endorses this measure and is working as an organization, and in concert with various coalitions, to secure its passage. If there is anything EBAC can do to ensure that this bill is signed into law, please contact me at (703) 351-4415 or our Executive Director, David Bancroft, at (202) 682-4352.

Sincerely,

WILLIAM J. BIRKHOFFER, *Chairman, Government Affairs Committee.*

THE UNITED STATES CONFERENCE OF MAYORS,  
June 8, 2000.

Hon. LINCOLN CHAFEE, *Chair,*  
*Subcommittee on Superfund, Waste Control and Risk Assessment,*  
*U.S. Senate,*  
*Washington, DC 20510.*

DEAR CHAIRMAN CHAFEE: On behalf of The United States Conference of Mayors, I am writing to convey our strong support for your legislation, "Brownfields Revitalization and Environmental Restoration Act of 2000," a bipartisan initiative that the mayors believe will help accelerate the assessment, cleanup and ultimately the redevelopment of the many thousands of brownfields all across this nation.

The nation's mayor have made enactment of such legislation one of our highest legislative priorities, because of the many benefits that can be realized for the Nation and local communities through the recycling of America's land. We are particularly pleased that your proposal has already secured the bipartisan cosponsorship

of the top leaders of the Senate Environment and Public Works Committee. We urge that this legislation advance expeditiously in the Senate to ensure that this important legislation is enacted before the 106th Congress adjourns later this year.

This proposal deals with the priority issues that mayors have identified as crucial to these local brownfield efforts. First, it provides needed partnership resources to cities, other communities and states to tackle this national problem, which, to date, has overwhelmed local efforts. A broader commitment of Federal resources for assessments of these sites, coupled with funds to help get these sites cleaned up, is a threshold issue for mayors and others struggling with the challenge of brownfield sites in their communities. Second, your legislation includes key liability reforms that will put an end to policies that have unfairly punished innocent parties, both public and private; important changes which help accelerate efforts to reclaim these sites. Finally, the legislation further clarifies the relationship between U.S. EPA and the states in making decisions and taking other actions to bring these sites back into more productive use.

We appreciate your many efforts and those of your committee colleagues in crafting this important bipartisan agreement. You can count on the strong support of the nation's mayors as you move this legislation forward.

Sincerely,

THOMAS COCHRAN, *Executive Director.*

THE TRUST FOR PUBLIC LAND,  
June 8, 2000.

Hon. LINCOLN CHAFEE, *Chairman,*  
*Subcommittee on Superfund, Waste Control and Risk Assessment,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Hon. FRANK LAUTENBERG, *Ranking Member,*  
*Subcommittee on Superfund, Waste Control and Risk Assessment,*  
*U.S. Senate,*  
*Washington, DC 20510*

Hon. ROBERT SMITH, *Chairman,*  
*Environment and Public Works Committee,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Hon. MAX BAUCUS, *Ranking Member,*  
*Environment and Public Works Committee,*  
*U.S. Senate,*  
*Washington, DC 20510.*

DEAR SENATORS CHAFEE, LAUTENBERG, SMITH AND BAUCUS: I am writing to thank you for the outstanding leadership you have demonstrated through your introduction of the Brownfields Revitalization and Environmental Restoration Amendments Act of 2000. On behalf of the Trust for Public Land (TPL) and our countless community partners across America whose landscapes and economies would benefit enormously from your landmark legislation, I also want to advise you of our energetic and enthusiastic support for this vitally important bill.

As you are well aware, brownfields pose some of the most critical land-use challenges and afford some of the most promising revitalization opportunities—facing our nation's communities, from the urban core to more rural locales. By transforming these idled, frequently abandoned sites into urgently needed parks and greenspaces, or by focusing investment into their appropriate redevelopment, reclamation of brownfield properties brings new life to local economies and to the spirit of neighborhoods. In the process, it has proven to be an extremely powerful tool in local efforts to control urban sprawl—directing economic growth to already-developed areas—and in addressing longstanding issues of environmental justice in underserved areas.

TPL gratefully acknowledges the clear commitment that the Environmental Protection Agency and other Federal agencies have demonstrated to brownfields restoration through existing programs. At the same time, given that there are an estimated 600,000 brownfield properties nationwide, we recognize that these limited resources have been stretched too far to allow for an optimal Federal role. Additional investment, at higher levels and in new directions, is essential to meeting the enormous backlog of need and to establishing the truest Federal partnership with the many state, local, and private entities working to renew brownfield sites.

The Brownfields Revitalization and Environmental Restoration Amendments Act would provide this much-needed Federal response. Through our work with myriad localities, TPL has witnessed the real, on-the-ground benefits that your bill, with its targeted approach to assessment and remediation, would provide. Given this experience, we are particularly gratified by the emphasis your legislation places on brownfields-to-parks conversion where appropriate; the broad assistance it provides to an appropriate spectrum of landscapes, from inner city to rural community to tribal lands; and the flexibility it affords to tailor loan and grant funding based on community needs and eventual uses. In all, the bill provides precisely the framework and annual funding that an effective national approach to brownfields requires.

Accordingly, TPL deeply appreciates your vision and craftsmanship in developing this crucial legislation, and we look forward to working with you toward its enactment.

Sincerely,

ALAN FRONT, *Senior Vice President.*

NATIONAL ASSOCIATION OF HOME BUILDERS,  
*June 23, 2000.*

Hon. ROBERT SMITH,  
*U.S. Senate,  
Washington, DC 20510.*

Hon. LINCOLN CHAFEE,  
*U.S. Senate,  
Washington, DC 20510.*

Hon. MAX BAUCUS,  
*U.S. Senate,  
Washington, DC 20510.*

Hon. FRANK LAUTENBERG,  
*U.S. Senate,  
Washington, DC 20510.*

DEAR SENATORS: On behalf of the 200,000 members of the National Association of Home Builders (NAHB), I express strong disappointment with S. 2700, the "Brownfields Revitalization and Environmental Restoration Act." Certainly, you should be lauded for successfully finding bipartisan compromise on this issue. This is a crucial first step. Unfortunately, however, the bill fails to provide enough incentives for our membership to take the risks involved in brownfields remediation and redevelopment. As a result, NAHB will oppose the bill and attempt to have it amended in committee and on the floor of the Senate to provide these incentives. I urge you to embrace these amendments.

In particular, our membership fears that too few brownfields will be affected by your legislation because it does not include protections under the Resource Conservation and Recovery Act (RCRA)—which covers petroleum contamination. Moreover, the bill also fails to protect our membership from potential liability and administrative orders under the Toxic Substance Control Act (TSCA). Finally, by making any discovery of "new information" a general "re-opener," the bill gives EPA too much authority to second-guess a cleanup that has passed a state's qualifications.

Recently, NAHB contracted with the Northeast/Midwest Institute' to assess each state's brownfields programs (if the state has one). This survey highlighted the fact that Congress should include petroleum and other pollutants not covered by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in brownfields reform legislation. For example, of the forty-four states responding that they have a brownfields program, 40 allow petroleum-contaminated sites to enroll in the program. Examples include New Hampshire and New Jersey, both of which allow sites contaminated with any pollutant or contaminant to enroll. Other states have recently moved to include petroleum contaminants in their program, including Rhode Island, which did so in 1996. As Charles Bartsch, author of the Northeast/Midwest study, observes:

In general states are much more advanced and comprehensive in their approaches to contamination from a brownfields/redevelopment vantage point. States have developed a greater level of comfort themselves in dealing with a variety of contaminants, including petroleum. Many state Voluntary Cleanup Plans also permit lead-based paint contamination to be addressed, a key concern of developers wishing to rehab old buildings into housing units. More and more states are taking a holistic



approach to contaminants, recognizing that all types impede the restoration of brownfield sites to productive use.

The reason the states have become more advanced than the Federal Government on this issue probably stems from the information they have gained from running their programs. Most states reported that a majority of contaminated sites enrolled in their brownfields program were either solely contaminated with petroleum or have some degree of petroleum contamination. For example, 60 percent of sites enrolled in Texas' program have petroleum contamination. Half of Maine's sites are petroleum-contaminated. 63 percent of Montana's sites are petroleum contaminated. In sum, NAHB's membership cannot understand why Congress should pass a bill that fails to bring relief to over half the potential brownfields in the nation. Why should Congress trust the states to adequately address hazardous materials but not petroleum contaminants? NAHB's members urge you to amend the bill to view contaminants holistically and to include in the legislation a single liability standard for any contaminant covered under Federal environmental law, just as the states are doing under their programs.

This leads to NAHB's second concern: the overlapping nature of Federal environmental laws dealing with toxic substances. S. 2700 addresses only CERCLA. While EPA prefers acting under this statute when it pursues an action in connection with a contaminated site, nothing bars EPA from taking enforcement actions under TSCA or RCRA at those sites. Put in simple terms, while the bill may close the front door of CERCLA litigation, EPA can still use several back doors if it wants to pursue legal action against a developer who has completed a state voluntary cleanup.

Certainly, EPA can legitimately claim that it has never used these other statutes to deal with hazardous materials—the kind of contaminants covered by the bill. Indeed, enforcement attorneys from EPA expressed precisely this point to NAHB in past conversations on brownfields reform (as did your staff during similar conversations).

At the same time, as a factual matter no legal barrier prevents EPA from using these other statutes. Nor would this bill erect one. Indeed, when asked, EPA's enforcement attorneys admitted that their preference for CERCLA over an expanded TSCA or RCRA had more to do with convenience than a strict legal or policy principle. In fact, they admitted that (if need be) they would turn to these other statutes in precisely the way our members fear if CERCLA were no longer available.

In truth, anyone who has observed the way environmental law has been enforced over the last two decades knows that once Congress gives EPA authority to do something, eventually EPA will use that authority. You recognize this fact tacitly by including bars on EPA's enforcement after a state has approved a cleanup. EPA has often reiterated that it has never taken an enforcement action under such a circumstance. Nevertheless, you bar them from taking one because you recognize that few developers will take the risk of remediating a brownfield when they believe EPA will inevitably take such action—if not today, then eventually.

This leads me to NAHB's third concern with the bill: the additional "re-opener." As is true of most brownfields bills, you provide several exceptions to the bar on EPA's enforcement authority at sites enrolled in a state cleanup program. One of these exceptions allows EPA to take action whenever "additional" information related to the cleanup, the conditions, or the contamination at the site is subsequently discovered. We understand that the variety of state programs requires a flexible term to describe what seems a reasonable concern; however, you have ended up with a very broad and ill-defined term ("additional") that invites too much legal uncertainty in the cleanup process.

Specifically, since the discovery of "additional" information revokes the entire bar on an EPA enforcement action regardless of its relevance to the completed cleanup, our members fear that EPA may "discover" even the smallest bit of additional information in order to revisit the entire cleanup. The result could render the entire prohibition ineffective. Far better, we believe, to address this concern by only providing protections for the work done as part of the state plan. If additional contamination is discovered, then EPA may address it regardless of the work done under the state plan. At the same time, EPA remains barred from addressing the work already completed.

While NAHB cannot support the bill until these issues have been addressed, I would be remiss if I did not acknowledge the good will your staff demonstrated in meeting with NAHB several times to discuss your legislation and our concerns. In addition, I recognize that you adopted in your bill an important feature of the brownfields proposal NAHB developed with the help of EPA. Indeed, NAHB supports the process you began when you reached out to us and other members of the concerned community. NAHB simply hopes that this process has not ended. We

hope that there remains an opportunity to address the concerns I have raised above so that we may all work together in passing effective brownfields legislation.

Sincerely,

GERALD M. HOWARD, *Senior Staff Vice President,  
Federal Government Affairs Division.*

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NATIONAL ASSOCIATION OF COUNTIES,  
*June 28, 2000.*

Hon. LINCOLN CHAFEE, *Chairman,  
Subcommittee on Superfund, Waste Control and Risk Assessment,  
Committee on Environment and Public Works,  
U.S. Senate,  
Washington, DC 20510.*

DEAR SENATOR CHAFEE: On behalf of the nation's elected county officials, I am writing to commend your efforts in offering bipartisan legislation, S. 2700, the Brownfields Revitalization and Environmental Restoration Act of 2000, to facilitate the assessment, cleanup and redevelopment of brownfields sites across the country.

The National Association of Counties strongly supports Federal legislation aimed at meeting the needs of states and local governments, urban suburban and rural, to expand and improve upon the success of brownfields programs. We believe your bill represents an excellent opportunity to do just that—by making financial resources available and by clarifying liability issues which so often place unnecessary barriers in the way of counties' ability to progress in the cleanup and development of these sites.

Nonetheless, while we support the approach to brownfields taken in S. 2700, county governments insist that any legislation amending the Superfund law also must address the need to codify local government liability reforms at codisposal landfills. This is a policy issue where there is clear bipartisan support, and we hope you will work with us in support of those reforms.

Thank you very much for your leadership on these important issues. Please feel free to contact Stephanie Osborn of NACo at (202) 949-4269 for further information.

We stand ready to work with you.

Sincerely,

C. VERNON GRAY, *President.*

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NATIONAL CONFERENCE OF STATE LEGISLATURES,  
*July 5, 2000.*

Hon. LINCOLN CHAFEE, *Chairman,  
Subcommittee on Superfund, Waste Control and Risk Assessment,  
U.S. Senate,  
Washington DC 20510.*

DEAR CHAIRMAN CHAFEE: I am writing on behalf of the National Conference of State Legislatures to comment on S. 2700 the Brownfields Revitalization and Environmental Restoration Act of 2000. NCSL commends the committee for its efforts to provide financial assistance to state and local governments for Brownfields revitalization.

We are concerned, however, about the matching share proposed in Title I Brownfields Revitalization Funding, Sec. 128. Brownfields Revitalization Funding, (i) Agreements, (3) . . . in the case of an application by an eligible entity under section (c)(1), requires the eligible entity to pay a matching share (which may be in the form of a contribution of labor, material, or services) of at least 20 percent, from non-Federal sources of funding, unless the Administration determines that the matching share would place an undue hardship on the eligible entity . . . NCSL believes the match rate should be the same as is currently required under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA). The match rate in S. 2700 should be reduced from 20 percent to 10 percent.

We commend the committee for addressing the role of third party and prospective purchaser in the chain of liability. NCSL supports efforts to remove disincentives—established under CERCLA—that impede economic development at these sites. Title II—Brownfields Liability Clarifications provides much improved protections for innocent landowners.

We are concerned, however, about the conditions under which the Administrator can bring an enforcement action. Title III State Response Programs, Section 129.

State Response Programs, (b) Enforcement in Cases of Release Subject to State Program, (1) Enforcement, (B) Exceptions, Subsections (ii), (iii) and (iv) does not require the Administrator to notify the state of an action the Administrator intends to take during or after completion of a response action. It also does not provide the state with an opportunity to comment on the notice or take necessary corrective actions. We suggest that S. 2700 be amended to compel administrator notification and allow for state comment and corrective action.

Title III State Response Programs, Sec. 129. State Response Programs, (b) Enforcement in Cases of a Release Subject to State Program (1) Enforcement, (C) Public Record requires a state to . . . make available to the public a record of sites, by name and location, at which response actions have been completed in the previous year and are planned to be addressed under the State program that specifically governs response actions for the protection of public health and the environment in the upcoming year . . .

Although we understand that the requirement, as it relates to possible cleanup sites for the upcoming year, is meant to be "good faith reporting," we suggest that the language be redrafted to read . . . make available to the public a record of sites, by name and location, at which response actions have been completed in the previous year and [to the best knowledge of the state] are planned to be addressed under the State program that specifically governs response actions for the protection of public health and the environment in the upcoming year . . .

Title III Response Programs, Sec. 129. State Response Programs also raises some concerns. As proposed in S. 2700, a grant is contingent on the fact that a State or Indian Tribe . . . (i) has a response program that includes each of the elements, or is taking reasonable steps to include each of the elements listed in paragraph (2); or (ii) is a party to a memorandum of agreement with the Administrator for voluntary response programs . . .

We are concerned that a number of the 35 states that have existing brownfields programs may not meet all of the "reasonable steps" requirements or may have difficulty in reaching a memorandum of agreement (MOA) with the Environmental Protection Agency (EPA). Given these two facts, a number of states may have difficulty qualifying for the program. NCSL would like to work with the committee to ensure that every state can take full advantage of the financial assistance available to them under your proposal.

We appreciate the efforts of the chief sponsors of S. 2700 and the subcommittee to bring forward a bill to further advance Brownfields cleanup and redevelopment. We look forward to working with you on this issue. For additional information, please contact Molly Stauffer in NCSL's Washington, DC Office at (202) 624-3584 or by e-mail at [molly.stauffer@ncsl.org](mailto:molly.stauffer@ncsl.org).

We respectfully request that this letter be added to the record for the hearing held June 29, 2000 before the Senate Committee on Environment and Public Works, Subcommittee on Superfund, Waste Control, and Risk Assessment regarding S. 2700, the Brownfields Revitalization and Environmental Restoration Act of 2000.

Sincerely,

SENATOR BEVERLY GARD, *Indiana State Senate,*  
*Chair, NCSL Environment Committee.*

U.S. SENATE,  
June 27, 2000.

DEAR COLLEAGUE: As cochairs of the Senate Smart Growth Task Force we are writing to urge your support of the Brownfields Revitalization and Environmental Restoration Act of 2000 (S. 2700). This is the first bipartisan brownfields bill that has the support of the chairman and ranking member of the Environment and Public Works Committee and of the Subcommittee on Superfund, Waste Control and Risk Assessment. Already, it has been endorsed by the United States Conference of Mayors, the Trust for Public Land, and the National Association of Realtors.

Brownfields are abandoned, idled, or under-used commercial or industrial properties where development or expansion is hindered by real or perceived environmental contamination. In a recent survey by the U.S. Conference of Mayors, 21,000 brownfields sites covering more than 81,000 acres were identified in 210 cities. Reusing and restoring these sites has been a central tenant of urban revitalization and smart growth for many years. Due to the real or perceived threat of contamination with brownfields, the costs of developing these sites is many times that of greenfields sites outside the city.

As advocates for smart growth—growth that is fiscally responsible; preserves the environment; encourages economic opportunity; and promotes social equity—we

strongly feel that whenever possible communities should encourage development in our existing urban areas where much underutilized land currently exists. The redevelopment of brownfields capitalizes on existing infrastructure, expands the urban tax base, encourages economic revitalization, mitigates urban sprawl, and reduces public health risks in many of the neighboring communities.

Introduced on June 8, 2000, S. 2700 will compliment many of the state's successful brownfield programs. The bill provides much needed funding to state and local jurisdictions for the assessment, characterization, and remediation of brownfield sites. Importantly, the bill clarifies liability for contiguous landowners, prospective purchasers, and innocent landowners. Finally, the bill provides greater certainty to developers and parties conducting the cleanup, ensuring that decisions under state programs will not be second-guessed.

We believe S. 2700 will do much to encourage both commercial and residential development in our nation's developed areas where existing infrastructure, access to public transit, and close proximity to cultural facilities currently exist. If you are interested in cosponsoring this important legislation, please have your staff call Ted Michaels (with the Subcommittee on Superfund, Waste Control, and Risk Assessment) at 4-1049 or Lisa Haage (with Sen. Lautenberg) at 4-3388. For more information on the Senate Smart Growth Task Force, your staff may call John Bailey at 4-6221 or Cameron Taylor at 4-0606.

Sincerely,

CARL LEVIN, *U.S. Senate.*  
JAMES M. JEFFORDS, *U.S. Senate.*

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AMERICAN SOCIETY OF CIVIL ENGINEERS,  
*June 29, 2000.*

Hon. LINCOLN CHAFEE, *Chairman,*  
*Subcommittee on Superfund, Waste Control, and Risk Assessment,*  
*Committee on Environment and Public Works,*  
*U.S. Senate,*  
*Washington, DC 20510.*

DEAR MR. CHAIRMAN: The American Society of Civil Engineers (ASCE) is pleased to offer this statement in support of enactment of S. 2700, the Brownfields Revitalization and Environmental Restoration Act of 2000.

ASCE was founded in 1852 and is the country's oldest national civil engineering organization. It represents more than 125,000 civil engineers in private practice, government, industry and academia who are dedicated to the advancement of the science and profession of civil engineering. ASCE is a non-profit educational and professional society organized under Part 1.501(c)(3) of the Internal Revenue Service rules.

As an initial matter, we agree that Congress needs to pass legislation that would eliminate statutory and regulatory barriers to the redevelopment of "brownfields," lands that effectively have been removed from productive capacity due to serious contamination. These sites, properly restored, aid in the revival of blighted areas, promote sustainable development, and invest in the nation's industrial strength.

Additionally, revitalized brownfields would reduce the demand for undeveloped land. ASCE supports limits on urban sprawl to achieve a balance between economic development, rights of individual property owners, public interests, social needs and the environment. Community growth planning should give consideration to the public needs, to private initiatives and to local, state and regional planning objectives. Full provision of public infrastructure and facilities redevelopment must be included in all growth initiatives and should be made at the lowest appropriate level of government.

We believe that a targeted brownfields restoration program should take into account site-specific environmental exposure factors and risks based on a reasonable assessment of the future use of the property.

With regard to specific provisions of S. 2700, ASCE urges Congress to adopt legislation that would ensure that the state and local agencies charged with redeveloping brownfields through grants and loans authorized under the Brownfields Revitalization and Environmental Restoration Act would benefit from the most qualified engineering service providers.

We strongly support an amendment to S. 2700 that would require all private-sector architects and engineers who are employed in the design and construction of brownfields cleanups using Federal grant or loan funds to be employed using the "qualifications-based selection" (QBS) procedures required for Federal agencies

under title IX of the Federal Property and Administrative Services Act of 1949, 40 U.S.C.A. §§ 541–544 (West 2000).

Traditionally, Federal Government procurement procedures properly have emphasized awarding contracts to the lowest bidder, or using price as a dominant factor. For many goods that the government purchases—paper, office equipment, desks, even construction services—this process serves the government and the taxpayer well. Specifications can be written, products can be inspected and tested, and safeguards can be built in to assure saving money.

Sometimes, however, agencies mistakenly assume professional architecture, engineering, surveying and mapping services fall into this category. Unfortunately, the assumption ignores the increase in costs to administer the preparation of detailed scopes of work and bid specifications, to evaluate numerous bids, and to remedy serious consequences of unprofessional A/E related services.

Quality, therefore, should always be the primary focus in the competition for architectural, engineering and surveying and mapping procurement. Only after high quality performance is ensured should the focus turn to the contract price. That is exactly what QBS provides. The title IX ensures that specialized skills and technologies are evaluated properly and are not overlooked. In this manner, the government benefits from direct control of both the quality of the services and the project's development.

Title IX applies to the acquisition of all architectural and engineering services, including services of an architectural or an engineering nature that are logically and justifiably to be performed by architects or engineers. The language of the Act governs the broadest range of A/E design services, i.e., any that are performed by architects or engineers and those that may be. Nothing in the Act limits or restricts the application of QBS procedures to some architectural or engineering services while exempting others.

The use of negotiated procedures directs the focus of procurement activity where it should be, on the quality of the professional A/E services specifically suited to a given contract.

All competitors must submit their qualifications to the procuring agency; the agency assesses the relative expertise of the competing firms; and the one most qualified firm is selected for the particular procurement. Such procedures produce a more cost effective design, map and related professional service than can be achieved under price bidding procedures.

The qualifications-based selection law was codified to protect the interest of taxpayers. It is Federal law because over the life of a project, engineering-related services account for less than one-half of 1 percent of total costs. Yet these important services play a major role in determining the other 99.5 percent on the project's "life cycle costs," such as construction, operation, and maintenance.

This process has been so successful at the Federal level that it is recommended by the American Bar Association in its model procurement code for state and local government. Thirty-seven states have enacted their own qualifications-based selection laws for architecture, engineering, surveying and mapping services. Others use it as a standard procedure. Today, no state has a specific law requiring bidding of these services.

Since 1972 Congress has clarified and extended the application of the QBS process to the awarding of architectural and engineering services contracts for aviation programs project grant application, see 49 U.S.C.A. § 47107 (West 2000); for mass transportation contract requirements, management and architectural engineering, see 49 U.S.C.A. § 5325 (West 2000); for military construction projects, see 10 U.S.C.A. § 2855 (West 2000); for procurement of architectural or engineering services as competitive procedures for procurement purposes, see 10 U.S.C.A. § 2302, 41 U.S.C.A. § 259 (West 2000); for river and harbor improvements, see 33 U.S.C.A. § 569b (West 2000); for permanent clarification of the application of the QBS process to surveying, mapping, charting and geodesy contracts of the National Imagery and Mapping Agency (NIMA), see 144 Cong. Rec. H8718 (daily ed. Sept. 25, 1998).

In a related area, ASCE would strongly oppose any blanket requirement mandating that architectural and engineering services be provided exclusively by the agencies receiving the Federal loans or exclusively by the private sector. We believe that Federal, state and local government agencies need engineering expertise within their organizations to manage these complex projects.

At the same time, public agencies should not to compete with engineers in private practice. Public sector engineering projects that can be accomplished more efficiently by private engineering firms should be contracted out with proper oversight by the public agency. The resulting ratio of in-house to contracted engineering services should be based upon the agency's on-going project and policy requirements rather than rigid rules or percentages fixed by legislation or regulation.

Mr. Chairman, we appreciate this opportunity to express our views on S. 2700. If you have questions for ASCE, please do not hesitate to contact Michael Charles of our Washington Office at (202) 789-2200 or by e-mail mcharles@asce.org.  
Sincerely yours,

DELOH HAMPTON, *Ph.D., P.E. President.*

AMERICAN INSTITUTE OF CHEMICAL ENGINEERS,  
*June 29, 2000.*

Hon. LINCOLN CHAFEE,  
*U.S. Senate,  
Committee on Environment and Public Works,  
Washington, DC 20510.*

DEAR SENATOR CHAFEE: The American Institute of Chemical Engineers (AIChE) appreciates the opportunity to comment on the recently introduced brownfields legislation. The members of AIChE hold paramount the safety, health, and welfare of the public, and therefore, support policies such as results-oriented methods as effective tools in achieving environmental safety goals.

Superfund cleanups and the development of brownfields sites should be undertaken in the safest and most efficient manner possible. By allocating this responsibility to the states, these two goals are much more likely to be realized. AIChE supports language in the "Brownfields Revitalization and Environmental Restoration Act" that focuses on streamlining the remediation process, thus creating a more efficient, safe and cost feasible cleanup.

The AIChE, founded in 1908, is a non-profit, professional association that provides leadership in advancing the chemical engineering profession. Our membership of more than 57,000 is made up of individuals who work in industry, government, academia, and consulting, and includes students and retirees. Our members are creative problem solvers who apply scientific knowledge and technical expertise in meeting societal needs.

Sincerely,

DR. BASIL C. DOUMAS, *Chairman,  
AIChE Government Relations Committee.*

*June 29, 2000.*

Hon. LINCOLN CHAFEE, *Chairman,  
Environment and Public Works Committee,  
Subcommittee on Superfund, Waste Control and Risk Assessment,  
U.S. Senate,  
Washington, DC 20510.*

Hon. FRANK R. LAUTENBERG, *Ranking Member,  
Environment and Public Works Committee,  
Subcommittee on Superfund, Waste Control and Risk Assessment,  
U.S. Senate,  
Washington, DC 20510.*

DEAR CHAIRMAN CHAFEE AND SENATOR LAUTENBERG: We are writing to thank you for the outstanding leadership you have demonstrated through your introduction of the Brownfields Revitalization and Environmental Restoration Act of 2000, and commend you for moving so efficiently to a hearing. Our organizations, and our many community partners across America, are heartened by the benefits that this legislation would impart upon our landscapes, economies, public parks and our communities as a whole. Transforming abandoned brownfield sites into greenfields or new development will provide momentum for increasing "smart growth" and reducing sprawl by utilizing existing transportation infrastructure, which in turn will lead to better transportation systems and the revitalization of historic areas and our urban centers.

As you are well aware, brownfields pose some of the most critical land-use challenges—and afford some of the most promising revitalization opportunities—facing our nation's communities, from our cities to more rural locales. By transforming these idled sites into urgently needed parks and greenspaces, or by focusing investment into their appropriate redevelopment, reclamation of brownfield properties brings new life to local economies and to the spirit of neighborhoods. In the process, it has proven to be an extremely powerful tool in local efforts to control urban sprawl by directing economic growth to already developed areas, encouraging the

restoration and reuse of historical sites, and in addressing longstanding issues of environmental justice in underserved areas.

We acknowledge the commitment that the Environmental Protection Agency and other Federal agencies have demonstrated to brownfields restoration through existing programs. At the same time, given that there are an estimated 450,000—600,000 brownfield properties nationwide, we recognize that these limited resources have been stretched too far to allow for an optimal Federal role. Additional investment, at higher levels and in new directions, is essential to meeting the enormous backlog of need and to establishing the truest Federal partnership with the many state, local, and private entities working to renew brownfield sites.

The Brownfield Revitalization and Environmental Restoration Amendments Act of 2000 would provide this much needed Federal response. Through our work with local governments, our organizations have witnessed first-hand—and have often worked as a partner to help create—the benefits that this bill would provide. Given our experiences, we are particularly gratified by the emphasis your legislation places on brownfields-to-parks conversion where appropriate, and the flexibility it provides to tailor loan and grant funding based on community needs and eventual uses. In all, this bill provides the framework and funding that an effective national approach to brownfields will require.

Accordingly, we appreciate your vision in developing this legislation, and we look forward to working with you toward its enactment.

Sincerely,

ALAN FRONT, *Senior Vice President,*  
*Trust for Public Land.*

JEFFREY SOULE, *AICP Director,*  
*Public Policy American Planning Association.*

RICHARD MOE, *President,*  
*National Trust for Historic Preservation.*

BARRY TINDALL, *Director,*  
*Public Policy National Recreation and Park Association.*

JAN SCHACH, *President,*  
*American Society of Landscape Architects.*

CH2M HILL,  
*June 23, 2000*

Hon. LINCOLN CHAFEE, *Chairman,*  
*Subcommittee on Superfund, Waste Control and Risk Assessment,*  
*U.S. Senate,*  
*Washington, DC 20510.*

DEAR CHAIRMAN CHAFEE: On behalf of the 9,500 employees of CH2M HILL, I am writing to thank and commend you for your leadership in crafting and cosponsoring “The Brownfields Revitalization and Environmental Restoration Act of 2000” S. 2700. Introduction of this legislation on a bipartisan basis is a vital first step toward enacting Brownfields Legislation during the 106th Congress.

Employee-owned CH2M HILL is a global leader in project development, construction, and engineering services that assists our public and private sector clients to apply technology, safeguard the environment, and develop infrastructure around the world.

Enactment of S. 2700 will make important contributions to the redevelopment and return to productivity of countless currently unused properties across the Nation through:

- Providing finality for Brownfields cleanups;
- Bolstering self-certification of state Brownfields programs;
- Recognizing that the judgment of environmental professionals in site assessment and remedy selection is critical for cost-effective and appropriate levels of cleanup by giving the U.S. EPA Administrator authority to establish standards of practice instead of requiring ASTM 1527–97 for such activity; and
- Authorizing increased resources to support state and local Brownfields cleanups.

CH2M HILL strongly endorses S. 2700 and is committed to working with you and like-minded individuals and organizations to secure its enactment into law. If you have questions or I can be of further assistance, I can be reached at (202) 393-2426.  
Sincerely yours,

RICHARD L. CORRIGAN, *Senior Vice President, Governmental Affairs.*

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NATIONAL GOVERNORS ASSOCIATION,  
*July 6, 2000.*

Hon. LINCOLN D. CHAFEE, *Chairman,*  
*Subcommittee on Superfund, Waste Control and Risk Assessment,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Hon. ROBERT C. SMITH, *Chairman,*  
*Committee on Environment and Public Works,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Hon. FRANK R. LAUTENBERG, *Ranking Member,*  
*Subcommittee on Superfund, Waste Control and Risk Assessment,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Hon. MAX BAUCUS, *Ranking Member,*  
*Committee on Environment and Public Works,*  
*U.S. Senate,*  
*Washington, DC 20510.*

DEAR SENATORS CHAFEE, LAUTENBERG, SMITH, AND BAUCUS: On behalf of the National Governors' Association (NGA), we are writing to commend you for your efforts to craft a brownfields bill that has garnered support from both sides of the aisle. The issues included in the "Brownfields Revitalization and Environmental Restoration Act of 2000" (S. 2700) are especially important to our states and communities, and deal with four out of the six priority issues that NGA has sought in any Superfund/Brownfields reform bill, including liability reforms for non-culpable parties, finality at state Brownfield cleanups, concurrence of the Governor before a site is listed on the National Priorities List, and funding to states for brownfields assessment and remediation.

We strongly support provisions in S. 2700 that relieve the fear of Federal Superfund liability from prospective purchasers, innocent landowners, and contiguous property owners. The funding provisions in the bill that provide grants to states and local government for both response actions as well as site assessments are also very positive steps in making certain that financial assistance is available to move sites toward final cleanup. The bill's "finality" provision also provides some degree of certainty that states can assure landowners who participate in state voluntary cleanup programs that they will not be engulfed in the Federal liability scheme, although we believe the language can be significantly improved to encourage voluntary cleanups. Last, the general deferral of a site's listing on the National Priority List, as long as the state's cleanup is making "reasonable progress," is more problematic for NGA given our policy on gubernatorial concurrence. The state response program outlined in Title III of the bill also includes several less significant, but important implementation issues for states. We hope to be able to work with you to develop language that we can support on all of these issues.

As you know, two of our priority issues are not included in your bill—a provision that clarifies that the state cost-share at Superfund sites is capped at 10 percent for operation and maintenance costs, and a sovereign immunity waiver under CERCLA for Federal facilities. Both of these issues have been sought by NGA for many years and are extremely important to states.

While we have concerns with some portions of S. 2700, on balance we believe that the bill moves Superfund law in the right direction. We hope you will work with states to address these issues. As you know, many states have developed highly successful voluntary cleanup programs that have resulted in prompt and effective remediation actions at brownfields sites with minimal governmental intervention. The Governors seek to continue our successful programs in partnership with the Federal Government. We hope that as the legislation goes forward you will find reasonable



and balanced ways to address our concerns. We remained committed to work with you to help pass a bill this year that the President can sign.

Sincerely,

GOVERNOR KENNY C. GUINN, *Chair, Committee on Natural Resources.*

GOVERNOR THOMAS J. VILSACK, *Vice Chair, Committee on Natural Resources.*

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INTERNATIONAL COUNCIL OF SHOPPING CENTERS,  
*July 10, 2000.*

Hon. LINCOLN D. CHAFEE,  
*U.S. Senate,*  
*Washington, DC 20510.*

DEAR SENATOR CHAFEE: The International Council of Shopping Centers (ICSC) commends your recent efforts in introducing S. 2700—the “Brownfields Revitalization and Environmental Restoration Act of 2000.” Along with your cosponsors, you have displayed critical leadership on a public policy issue too often caught up in partisan rhetoric. ICSC enthusiastically supports S. 2700 and looks forward to working with you and your staff to ensure its passage.

Shopping centers are America’s marketplace, representing economic growth, environmental responsibility, and community strength. Founded in 1957, the ICSC is the global trade association of the shopping center industry. ITSC nearly 35,000 U.S. members represent almost all of the 44,426 shopping centers in the United States. In 1999 alone, these centers accounted for more than \$1.2 trillion dollars in retail sales and generated more than \$47.5 billion in state sales tax revenue. In addition, shopping centers employ over 11 million people, about 9 percent of non-agricultural jobs in the United States. Legislation such as S. 2700 will allow center developers to step-up their efforts to assist in the redevelopment of urban areas in their continuing efforts to enhance the economic and environmental quality of America’s cities.

S. 2700 provides practical solutions to many of the issues developers confront when debating the merits of brownfields redevelopment. Provisions providing liability relief for innocent property owners who have not caused or contributed to hazardous waste contamination; increased funding for the cleanup and redevelopment of the hundreds of thousands of the country’s brownfields sites; and, recognition that sites remediated under the authority of state voluntary clean up laws should constitute final action are all vital to encouraging development in sites that may otherwise be left abandoned.

The targeted reforms you have focused on will result in greater infill development and enhance the urban landscape. S. 2700 will not only spur economic development but also improve environmental quality throughout the country. ICSC looks forward to working with you in the coming months in support of this important legislation.

Sincerely,

WILLIAM H. HOFFMAN, III, *Manager,*  
*Environmental Issues International Council of Shopping Centers.*

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INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.,  
*July 13, 2000.*

Hon. LINCOLN D. CHAFEE, *Chairman,*  
*Subcommittee on Superfund, Waste Control and Risk Assessment,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Hon. ROBERT C. SMITH, *Chairman,*  
*Committee on Environment and Public Works,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Hon. FRANK R. LAUTENBERG, *Ranking Member,*  
*Subcommittee on Superfund, Waste Control and Risk Assessment,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Hon. MAX BAUCUS, *Ranking Member,*  
*Committee on Environment and Public Works,*  
*U.S. Senate,*  
*Washington, DC 20510.*

DEAR SENATORS CHAFEE, LAUTENBERG, SMITH AND BAUCUS: The Institute of Scrap Recycling Industries, Inc., (ISRI) continues to strongly support the passage of S. 2700, the Brownfields Revitalization and Environmental Restoration Act of 2000. Passage of this bipartisan bill will reduce the many legal and regulatory barriers that stand in the way of brownfields redevelopment.

S. 2700 is important legislation that will provide liability relief for innocent property owners who purchase a property without knowing that it was contaminated, but who carried out a good faith effort to investigate the site. It also recognizes the finality of successful state approved voluntary cleanup efforts and provides funds to cleanup and redevelop brownfields sites.

As ISRI first offered in the beginning of this year, we stand ready to help build support for the passage of this bipartisan brownfields bill. Since S. 2700 was introduced, the membership of ISRI has been working to build grassroots support and seeking cosponsors for the bill.

ISRI looks forward to continuing to work with you to see that S. 2700 becomes law. We believe that the Brownfields Revitalization and Environmental Restoration Act of 2000 is a model or sensible bipartisan environmental policy.

Sincerely,

1ROBIN K. WIENER, *President, Institute of Scrap Recycling Industries, Inc.*

STATEMENT OF NATURAL RESOURCES DEFENSE COUNCIL; ALTERNATIVES FOR COMMUNITY AND ENVIRONMENT; CENTER FOR PUBLIC ENVIRONMENTAL OVERSIGHT; DETROITERS WORKING FOR ENVIRONMENTAL JUSTICE; JESUS PEOPLE AGAINST POLLUTION; PARTNERSHIP FOR SUSTAINABLE BROWNFIELDS REDEVELOPMENT; SUBRA COMPANY; SURFACE TRANSPORTATION POLICY PROJECT; WEST HARLEM ENVIRONMENTAL ACTION

DEAR SENATORS CHAFEE AND LAUTENBERG: The undersigned national environmental organizations and local environmental justice organizations would like to lend our support to your efforts to pass S. 2700, the Brownfields Revitalization and Environmental Restoration Act of 2000. As you know, these groups have worked for years to promote the cleanup and redevelopment of brownfield sites, while at the same time ensuring the protection of public health and the environment. This bill represents a significant step forward and holds the potential to help break the deadlock on advancing Federal brownfields clean-up issues. Though the contamination may not rise to the level of Federal attention, brownfield sites in cities and rural areas across the country still threaten the health of nearby residents, of wildlife, and of the environment. Brownfields sites also undermine an area's economic health. At the same time that America is losing 365 acres of greenspace per hour to development, sites rich in existing infrastructure and near to labor pools remain abandoned because of contamination.

Your bill would provide much needed funds for communities to revitalize and clean up contaminated property, and at the same time would create a framework for improving how these cleanups are conducted. Your bill holds great potential for cleaning up communities, protecting health, renewing local economies, combating sprawl and preserving or creating open space. First, it provides financial resources

in the form of grants, revolving loans and technical assistance grants (TAGs) to municipalities, non-profit organizations and community redevelopment groups for increased public participation and site-related assessment and cleanup activities. This assistance will help provide for meaningful community input in clean-up decisions that will have a significant effect on that community's quality of life. Numerous studies of clean-ups all across the country have demonstrated that early and frequent community participation results in better and more efficient clean-ups.

Second, the legislation requires that states take steps necessary for their Brownfields programs to satisfy important assessment, remediation, and public involvement criteria (or that the state has entered a separate agreement with EPA) as a condition of receiving Federal grants. Third, the bill provides important new funding for preservation of greenspace and open space in communities and makes greenspaces a priority for development. And, in Title II, S. 2700 adopts sensible liability protections, which we have long supported. These clarifications should encourage brownfields activity while also preserving vital Federal enforcement authority and a baseline level of protection for all Americans.

Wisely, the bill is narrowly tailored to achieve the goal of more and better brownfields clean-ups. We would oppose vigorously any effort to broaden the liability clarifications provided by the bill, including application of the bar to statutes other than CERCLA, or any changes to the enforcement bar provisions, which we read to embody current EPA policy and practice for taking action under CERCLA section 106.

We recognize that this legislation represents a delicate compromise and a unique consensus on brownfields, which would not have been possible without your commitment, and that of your dedicated staff, to developing a national framework for restoring our communities and the environment at the same time. While our organizations support moving this legislation forward, below we call to your attention some important issues which we strongly urge you to address.

#### *Time Frames for Developing State Brownfield Programs*

We strongly support additional funding for states to develop effective and enforceable brownfields cleanup programs consonant with the criteria in the bill. Unfortunately, the current language appears to allow states to continue to receive funding indefinitely for taking undefined "reasonable steps" toward implementing a program that meets the criteria. We presume that "reasonable steps" means that establishment of those programs should be required to occur within some set period of time (e.g., 3-4 years), and our support is conditioned on this understanding. In any event, EPA should be allowed to cut funding for those states not making significant efforts to reach the funded-program criteria.

#### *Enforcement Bar and Re-openers*

Under the proposed legislation, EPA would be prohibited from taking enforcement action or seeking cost recovery at eligible sites which are subject to a state cleanup program. As we understand the bill, this "enforcement bar" will apply only to cleanups that are designed and initiated after the effective date of this bill, and not to cleanups well underway or that those have been completed but are being maintained or monitored. We could not support a bill that would do otherwise. We also strongly suggest adding an exclusion from the enforcement bar that would allow the EPA to take action at a site if the land use changes substantially and the Administrator determines that, as a result of the new land use, the cleanup is inadequate to protect human health and the environment.

#### *Institutional Controls*

To its credit, the bill contains important language that would provide for a public inventory of brownfields cleanups in each state, and information on how the institutional controls in place (e.g., deed restrictions) will protect the public when a cleanup does not remove all wastes at brownfields sites. The text lacks a critical component, however, for effective legislation in this area: the bill should ensure that public information on institutional controls indicates how and by whom these controls will be enforced and maintained in the future.

#### *Eligible Entities*

Non-profit and community development organizations (CDOs) are not currently listed among the entities eligible to receive funds under the pilot site assessment program. We strongly urge you to expand eligibility beyond governmental entities and at the very least allow CDOs and non profits to apply for funds if no other eligible entity in the area applies. We also urge you to include gas stations in the pilot site assessment program. Gas stations may well be the biggest category of sites affecting communities. Since the site assessment funds do not come from the CERCLA

trust fund, the CERCLA petroleum exclusion is irrelevant. And including these sites in the pilot assessment program would not involve opening up other statutes, while it would help communities gain a better picture of the full range of contamination problems they face.

#### *Cost Recovery*

We are concerned that the bill would bar the EPA from using its current authority in CERCLA section 107(a) to recover costs at brownfields sites even if a state does not have at least a minimally adequate state cleanup program. Federal taxpayers should not have to bear the cost for an inadequate brownfields cleanup when a state is not demonstrating a commitment to a strong and effective state cleanup program, and responsible parties exist who could and should pay for the Federal response action. Although we recognize that the funding in this bill will be a strong incentive for states to ensure that their state cleanup programs satisfy your bill's minimum criteria, we would suggest requiring that a state meet the grant criteria listed in the legislation before the enforcement bar would apply to those states.

#### *Community Advisory Groups*

We suggest that the legislation allow for the creation of community advisory groups in state brownfields programs where sites may warrant additional public involvement. These community advisory groups would facilitate greater public participation in the decisionmaking process, particularly at sites where there may be significant community health concerns. Additionally, the legislation should define the evaluation criteria of the TAG program in more detail and ensure consistency by incorporating characteristics of CERCLA's TAG program (e.g., timeframe for filing applications). Maintaining a consistent framework for all Federal TAG programs would lead to increased predictability and success for interested communities to apply and receive Federal financial assistance.

#### *Community Outreach Plans*

While the bill would help communities to become more involved in decisions regarding brownfield sites, it could be stronger in seeking community participation. We urge you to give states more guidance and encouragement to develop programs which seek active community involvement. For example, California's voluntary clean-up program requires the development of a community profile for sites going through a full clean-up. If the community profile reveals sufficient interest, the program directs development of a community relations plan as part of the overall planning at a brownfield site or group of sites. Elements of such a plan include: identifying community leaders, others who may be concerned, and level of interest in the site; deciding how community members will be notified of planning and other events; determining how documents and information will be made available; and establishing how comments will be sought. This avoids prescribing one approach for all circumstances, but encourages early consideration of and planning for community outreach.

#### *Long-term Notice through State Lists and Easy Access to the Information*

The bill's language regarding the state lists is not completely clear on whether those sites with remaining contamination and institutional controls will remain on the lists until such time as the site is cleaned up to a level allowing unrestricted use. The bill appears to envision this sort of treatment, which makes sense if part of the purpose is to provide a way of providing notice of the need for caution to current and future users of the relevant property and surrounding areas. In addition to clarifying this language, we also suggest making this information available electronically to gain the full benefit of making this information easily available to the public.

We hope that our comments on S. 2700 are helpful. We look forward to working with you as this legislation advances.

Sincerely,

JACQUELINE HAMILTON, *Senior Attorney, Natural Resources Defense Council, Washington, DC.*

DON CHEN, *Smart Growth Program Director, Surface Transportation Policy Project, Washington, DC.*

CHARLOTTE KEYS, *President, Jesus People Against Pollution, Columbia, MS.*

PENN LOB, *Alternatives for Community and Environment, Roxbury, MA.*

VERNICE MILLER-TRAVIS, *Executive Director, Partnership for Sustainable Brownfields Redevelopment, Baltimore, MD.*

PEGGY SHEPARD, *Executive Director, West Harlem Environmental Action (WHEAct), New York, NY.*

LENNY SIEGEL, *Director, Center for Public Environmental Oversight, San Francisco, CA.*

WILMA SUBRA, *President, Subra Company, New Iberia, LA.*

DONELE WILKINS, *Executive Director, Detroiters Working for Environmental Justice, Detroit, MI.*

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ATTACHMENT

We would like to commend you for crafting a viable, bipartisan brownfields bill, S. 2700, the Brownfields Revitalization and Environmental Restoration Act of 2000. The bill contains a number of positive features, including narrowly targeted liability provisions, substantial funding to improve public participation and site-related assessments and cleanup activities, and provisions that will increase community involvement in brownfields cleanups and allow the preservation or creation of greenways and open spaces. Importantly, it is our understanding that eligible response sites under the bill would not include sites for which the preliminary assessment site investigation resulted in a "pre-score" ranking of 28.5 or higher. Our support is conditioned on that understanding.

We have some concerns with the bill, however, including the fact that some Federal funding may be awarded to states whose brownfields programs do not necessarily meet Federal criteria for program quality. States apply widely differing levels of resources, expertise and commitment to cleaning contaminated sites and to ensuring that site cleanups will continue to protect human health and the environment long into the future. In addition, we remain unconvinced of the need for any changes to existing Federal enforcement authority, and we would strongly oppose any changes going beyond what is now in the bill.

Despite these concerns, our groups recognize that S. 2700 represents a delicate compromise and has been narrowly crafted to avoid the pitfalls of previous brownfields bills. While we support this bill in its current form, if it were to change significantly we would reevaluate our support. Because of the importance of this bill, our organizations will remain vigilant to assure that this legislation maintains its current commitments to the environment and public health. As this legislation advances, we hope that we can be of assistance in helping the bill become law.

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ENVIRONMENTAL TECHNOLOGY COUNCIL,  
August 28, 2000.

Hon. BOB SMITH, *Chairman,*  
*Committee on Environment and Public Works,*  
*Washington, DC 20510.*

Hon. MAX BAUCUS, *Ranking Minority Member,*  
*Committee on Environment And Public Works,*  
*Washington, DC 20510.*

Hon. LINCOLN CHAFEE, *Chairman,*  
*Subcommittee on Superfund, Waste Control and Risk Assessment,*  
*Washington, DC 20510.*

Hon. FRANK LAUTENBERG, *Ranking Minority Member,*  
*Subcommittee on Superfund, Waste Control and Risk Assessment,*  
*Washington, DC 20510.*

DEAR SENATORS: I am writing on behalf of the Environmental Technology Council to express our support for S. 2700, the Brownfields Revitalization and Environmental Restoration Act of 2000.

Throughout our country, brownfields limit the future development and reuse of valuable property. Most of these sites are in urban areas where redevelopment would be "smart" growth reducing sprawl by allowing the use of the existing infrastructure.

Redeveloping brownfields is a very important environmental goal that needs active programs to reduce the risks these sites have created. Many of these sites have contaminated soils that threaten ground and surface waters. The incentives to clean up the sites by given significant finality to state cleanups will have a very positive impact and increase the rate of site cleanups.

We especially applaud the requirement for states to keep public records of site cleanups. Since many sites will be remediated but hazardous wastes will still be left onsite, it is critical for anyone changing the land use in the future to know what threats still exist at the sites.

We applaud your bipartisan efforts to address this important hazardous waste problem.

Very truly yours,

SCOTT SLESINGER, *Vice-President for Government Affairs.*

CITY OF CASPER, WY,  
July 27, 2000.

Hon. LINCOLN CHAFEE,  
*U.S. Senate,*  
*Washington, DC 20510.*

SENATOR CHAFEE: I want to thank you for informing me of your intentions concerning this new bill. I want you to know that the City of Casper is very much in support of your efforts surrounding Brownfields revitalization and restoration. This bill sounds as though it will be very instrumental in the successful facilitation of remediation efforts throughout the country.

The City of Casper announced recently the creation of our Urban Renewal Agency that will oversee the development of the Amoco redevelopment corridor. The site of the former Amoco refinery within this corridor is currently undergoing a massive cleanup and being transformed into a more productive piece of land. We are very optimistic about what this project will do for our community. Brownfields revitalization is very important to Casper!

It is exciting to think about the benefits that a piece of legislation like S. 2700 has for this country. Once again, thank you for your efforts to enhance the resources available for Brownfields redevelopment. If I can be of any assistance at the local level or whatever, please feel free to let me know.

Sincerely,

DR. TOM WALSH, *Mayor.*

JOSEPH VAS, *Mayor,*  
*City of Perth Amboy, NJ 08861, July 6, 2000.*

Hon. FRANK LAUTENBERG,  
*United States Senator.*

DEAR SENATOR LAUTENBERG: Throughout the country, government leaders are coming to the realization that it is both economically and physically prudent to invest our resources into rebuilding our urban cities due to the existing infrastructure which has the capacity to support redevelopment. However, in this rebuilding process there remains one major impediment—rectifying years of environmental decay brought on by the loss of industry.

Nationwide, cities are finding the ability to triumph over this obstacle with the help of Federal dollars. In order to continue our success, capitalize on the burgeoning economy and reclaim valuable land, we must fight to ensure that Federal assistance continues for our cities. With this in mind, I am asking for your earnest support for the Senate Bipartisan Brownfields Bill (S. 2700).

It is imperative that this bill receive the attention it deserves so that cities such as Perth Amboy can continue talking the initiative to remediate hazardous environmental conditions and attract private investment to transform these fledgling properties. Perth Amboy is proof positive that this system is effective. Through your continued support over the years, we have been able to reclaim valuable land which is now poised for an ambitious redevelopment project.

(S. 2700) so that this program can be continued for the benefit of every American city battling this timeless struggle. With kind regards, I remain.

Sincerely,

JOSEPH VAS, *Mayor.*

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NATIONAL CONFERENCE OF BLACK MAYORS, INC.,  
*August 18, 2000.*

Hon. LINCOLN CHAFEE,  
*U.S. Senate,*  
*Washington, DC 20510.*

SIR: I am writing on behalf of the membership of the National Conference of Black Mayors, Inc. (NCBM) to express support for the Brownfields Revitalization and Environmental Restoration Act of 2000.

It deserves NCBM's support for a number of reasons. The proposed legislation builds upon an EPA program that addresses important challenges to local economic revitalization. It would continue an approach that leverages financial resources with Federal dollars and promotes local partnerships. The measure is bipartisan, and would be potentially beneficial to both large and small communities in addition to states and Indian tribes. EPA reports that Brownfields redevelopment activities have resulted in 6,400 jobs and a \$6.4 billion economic impact since 1995. Clearly the additional funding and administrative refinements called for in S. 2700 promise similar substantial gains.

NCBM supports S. 2700. However, we have a few recommendations that will extend its benefits to many small towns and rural areas that are left out of current considerations. First, we are particularly concerned about the large number of underground storage tanks usually associated with abandoned gas stations that are rampant in small towns and rural areas. Often these tanks belonged to small business operators who are no longer in business or lack the resources to remove them and return their non-producing property back to the tax roles. For a small town, redeveloping a service station corner for a small town is just as daunting as redeveloping an out of service plant for a large town.

Section One of the bill should incorporate funding to assist small towns and rural areas conduct site assessments and to prepare redevelopment plans for abandoned gas stations and other sites with underground storage tanks. Also, the bill should be more specific on the types of state action that would exempt contaminated sites from federally enforced cleanup.

Our suggestion does not address liability for environmental contamination caused by leaks and spills from underground storage tanks. We feel that those responsible parties should not be relieved from liability simply because a site needs redevelopment. Those who caused the damage should be held completely responsible for necessary environmental restoration. However, in those numerous cases where the responsible parties are no longer in business or are financially incapable, alternatives should be made available for small towns and rural areas to have certain properties treated as "brownfields" for financial purposes.

We are interested and available to continue working with you to complete the details of S. 2700 as it moves through the legislative process. You should know that NCBM is prepared to offer testimony before the committees that are considering this vital piece of legislation. If we can provide additional assistance, please contact me.

Thank you for your hard work on this important national concern.

Sincerely,

MICHELLE D. KOUROUMA, *Executive Director.*

EXECUTIVE OFFICE, CITY OF PROVIDENCE, RHODE ISLAND,  
*Vincent A. Cianci, Jr., Mayor, June 27, 2000.*

Hon. LINCOLN CHAFEE,  
*U.S. Senate,*  
*Washington, DC 20510.*

DEAR SENATOR CHAFEE: I am writing to applaud your leadership in the formation of the bipartisan legislative package that focuses on brownfields legislation, the "Brownfields Revitalization and Environmental Restoration Act of 2000" (S. 2700). This far-reaching bill underscores the importance of sufficient funding for state, tribal, regional, and local governments for the assessment, characterization, and remediation of brownfields sites in cities and towns across America.

The experience of Providence dramatically illustrates the need for, and the benefits of, this legislation. Our remediation of brownfields properties is reducing human health and environmental threats, returning abandoned or underutilized property to productive use, creating and preserving open space, encouraging job growth, increasing the local tax base, curbing urban sprawl, and improving the overall quality of life in the capital city.

You have my enthusiastic support in your efforts to shepherd S. 2700 to a successful conclusion in the Senate. Communities across the United States are forging ahead with the vital task of cleaning our urban sites and restoring them to full and beneficial use, and the Brownfields Revitalization and Environmental Restoration Act of 2000 will go a long way toward strengthening our collective efforts. If I can be of any assistance, please don't hesitate to contact me. I send my best wishes and regards.

Sincerely,

VINCENT A. CIANCI, JR., *Mayor of Providence.*

BROWNFIELD NEWS,  
*June 26, 2000.*

Hon. LINCOLN CHAFEE,  
Hon. FRANK LAUTENBERG,  
Hon. BOB SMITH,  
Hon. MAX BAUCUS,  
*U.S. Senate,*  
*Washington, DC 20510.*

DEAR SENATORS: Brownfield News magazine is the only journal dedicated to covering the topic of brownfields on a consistent basis. With more than 20,000 readers, the magazine reaches a diverse group of professionals, from both the public and private sector, who are interested in brownfield redevelopment. Our readers represent four distinct sectors of this emerging market: Sellers/Owners, Buyers/Developers, Real Estate Transaction Support and Policy Makers.

On behalf of our readers and as Publisher of Brownfield News, I am writing to convey our support for the legislation, "Brownfields Revitalization and Environmental Restoration Act of 2000". This bipartisan initiative will bring efficiencies to the marketplace by providing predictability, consistency and environmental certainty, which will stimulate more brownfield transactions. Specifically, we believe this legislation will provide the following relief to each of the four sectors of the market:

Owner's Section: Provides liability relief for innocent property owners who have not caused or contributed to site contamination.

Developers/Investors Section: Recognizes the finality of successful state hazardous waste cleanup efforts.

Transaction Support Section: Recognizes the validity of professional judgment in site assessments.



Policy Makers Section: Provides funding for cleanup and redevelopment of the hundreds of thousands of our nation's brownfield sites and further clarifies the relationship between the U.S. EPA and states.

"Brownfield" is no longer a label that stigmatizes a property, but represents a redevelopment opportunity and a new way of thinking about environmental issues and economic development concerns. This legislation will bring about meaningful reforms and will remove unwanted impediments, allowing the public and private sector to redevelop properties based on local needs and community involvement.

We commend your pragmatic approach in dealing with brownfield legislation and would be happy to work with each of you to provide coverage on this issue in future articles of the magazine.

Sincerely,

ROBERT V. COLANGELO, *Publisher.*

THE IT GROUP,  
June 21, 2000.

Senator LINCOLN CHAFEE,  
U.S. Senate,  
Washington, DC 20510.

DEAR SENATOR CHAFEE: I am writing in support of S. 2700, the Brownfields Revitalization and Environmental Restoration Act of 2000. Your leadership in crafting bipartisan legislation to accelerate the cleanup and reuse of brownfields is to be commended.

As a provider of environmental infrastructure services, The IT Group believes S. 2700 provides an opportunity for states, tribes and local governments to more effectively manage the cleanup of brownfields. The IT Group is a \$1.3 billion diversified engineering firm, whose eight thousand employees offer a full range of consulting, facility management, engineering and construction services. IT now has over 100 offices throughout the U.S. and abroad.

I wish you continued success as S. 2700 moves through the legislative process. Without adequate funding and the liability protections offered by your legislation, the productive reuse of lightly contaminated properties will only be further delayed. I look forward to working with you on brownfields restoration and similar issues in the future.

Sincerely,

CRAIG CROTTEAU.

THE WILDERNESS SOCIETY,  
June 23, 2000.

Hon. LINCOLN CHAFEE, *Chairman,*  
*Subcommittee on Superfund, Waste Control and Risk Assessment,*  
U.S. Senate,  
Washington, DC 20510.

DEAR SENATORS CHAFEE, LAUTENBERG, SMITH AND BAUCUS: I am writing to express on behalf of The Wilderness Society a thank you for your leadership in introducing the Brownfields Revitalization and Environmental Restoration Amendments Act of 2000. We are happy to support the land provisions in Title I of S. 2700.

As an organization dedicated to a network of wildlands, restoring our nation's cities and communities for open space and chances for restoration of badly over-developed lands is a vital part of our mission. We believe that by transforming idled, frequently abandoned sites into urgently needed parks and greenspaces bring new life to these local economies and to the community as a whole.

Directing economic growth to already developed areas also helps to control urban sprawl and the protection of our last remaining wild lands. It also helps to address the longstanding issues of environmental justice in our undeserved areas.

The bill you have introduced places special emphasis on brownfields to parks conversion where appropriate and assistance to broaden the spectrum of landscapes from our inner city to rural communities to tribal lands. We believe that the framework to reach a truly effective national approach is contained in the bill introduced on June 8. As a public lands organization, we do not have the expertise to comment on the other portions of the Act.

We appreciate your many efforts in getting S. 2700 introduced in this important bipartisan agreement. Please count on The Wilderness Society's support to work

with you and the committee to bring more dedicated brownfields lands to our nation's growing network of wildlands by passage of this act.

Sincerely,

RINDY O'BRIEN, *Vice President Policy,  
The Wilderness Society.*

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STATEMENT OF HON. SLADE GORTON, U.S. SENATOR FROM THE STATE OF  
WASHINGTON

Mr. Chairman, I am pleased to cosponsor S. 2700—the "Brownfields Revitalization and Environmental Restoration Act of 2000." I appreciate the work of the chairman, as well as Senators Lautenberg, Smith, and Baucus in writing this important legislation and for holding this hearing today.

This legislation is pro-environment and pro-economic development. It is particularly important for several small communities in Washington and across the Nation that have been unfairly saddled with moderately contaminated sites they are able neither to clean up, nor to sell to prospective buyers due to liability risks.

Providing assistance to states and localities that seek to clean up industrial sites for future economic development is common sense. When Congress passed the Superfund law in the 1980's to help fund the cleanup of large and heavily contaminated sites across the United States, unfortunately it failed to authorize a program that would assist smaller sites. This legislation would authorize significant funding for brownfields cleanup, and would make key improvements to the current program.

Over the past year, a dozen cities in Washington have applied for and have received grants under the existing Environmental Protection Agency's brownfields program. These sites are typically abandoned wood treatment plants, lumber mills, and other small companies that have filed bankruptcy. Unfortunately, because of the restrictions, negative stigma, and liability associated with Superfund sites, and the cumbersome brownfields grant application process, many communities have been either unable or unwilling to obtain assistance to clean up these sites.

Two sites in Washington particularly exemplify the need for this legislation and for a more comprehensive reform of our Superfund laws. The first is the Port of Ridgefield. Ridgefield is a small community of about 1,500 residents located 20 miles away from Portland, Oregon. A wood treating company filed bankruptcy several years ago and left the community 41 acres of contaminated soil and an underground plume that is moving dangerously close to the Ridgefield National Wildlife Refuge, as well as Carty Lake and Lake River.

While the Port has been working diligently to attract new tenants to its industrial area and bring in more revenue, unfortunately, these efforts have been stymied until the site is cleaned up. The Port and the State of Washington contributed approximately \$5 million dollars to assess the damage at the site and initiate actual clean up. Unfortunately, the total cost to clean up the site is \$30 million and the port and state will face a shortfall of about \$10 million. The Port has sought the assistance of brownfields grants and research grants involving innovative cleanup technology from EPA.

EPA met with the Port of Ridgefield officials and advised that the port is eligible to receive a \$200,000 assessment grant, but only if EPA conducts a whole new site assessment. Awarding money to re-assess a site that is already into the cleanup phase would be a flagrant waste of time and the taxpayers' money. It would defeat the very purpose of the brownfields program, which is to assist communities that wish to redevelop contaminated sites. On the other hand, the port does not want to be listed under the Superfund site list and risk driving up the cost of cleanup, delaying cleanup for several years, and relinquish control of the cleanup to EPA officials. S. 2700 would help address this situation by allowing the state more flexibility and authority to develop state brownfields programs and provide greater assistance to sites such as the Port of Ridgefield.

The second example involves the Rayonier Mill site located in Port Angeles in the northern Olympic Peninsula of Washington. In that case, the mill closed in 1997 and did the most responsible thing it could do: it announced its intentions to voluntarily assist in the clean-up of its 80-acre site, which is mildly contaminated with various toxic materials that have been used to dissolve wood pulp at the plant for the last 60 years.

Representatives of Rayonier met with EPA representatives, who initiated a 2-year investigation to determine whether the site should be designated as a Superfund site. The Washington Department of Ecology, the Governor of Washington joined local officials in requesting EPA to defer the cleanup of the site to the state.

After spending an astronomical \$2 million in unsubstantiated site investigation costs, EPA ultimately agreed to defer the cleanup to the state. However, EPA is now seeking reimbursement of the \$2 million it incurred to determine the site was not a Superfund site from the mill. EPA's actions creates a disincentive for other owners of contaminated sites to take responsibility for their sites' cleanup on a voluntary basis. S. 2700 would prevent future incidents such as this by requiring deferral of a Superfund listing of a site at the request of a state if the state or responsible party makes reasonable progress toward cleaning up the site.

These examples illustrate the need for reform of Superfund laws and the existing brownfields program. S. 2700 is a strong first step in the right direction to achieving the goals that we all share- cleaning up toxic sites that threaten the environment, and creating a tool to assist local governments to turn contaminated sites into economic assets. I'm pleased to that it has bipartisan support, and I urge all of my colleagues to vote for its quick passage.

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STATEMENT OF TIMOTHY FIELDS, JR., ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY

#### INTRODUCTION

Good afternoon, Mr. Chairman, and members of the subcommittee. I am pleased to have this opportunity today to: 1) share with you the significant accomplishments the Administration has achieved since the 1995 inception of the Brownfields Economic Redevelopment Initiative in helping States, Tribes, local governments, and communities across America to address the problem of brownfields; and 2) comment on the subject of brownfields legislation, in particular S. 2700, "The Brownfields Revitalization and Economic Restoration Act of 2000."

The cleanup of brownfields is important to the environmental and economic health of our Nation. We commend the committee for their efforts to produce bipartisan brownfields legislation and thank Senator Lautenberg for his tireless leadership on these issues during his many years of public service in the U.S. Senate. The Administration believes that S. 2700 represents a positive step forward and we support the bill. We look forward to working with the committee to further improve the bill during the legislative process.

#### BROWNFIELDS ECONOMIC REDEVELOPMENT INITIATIVE

Brownfields, which are abandoned and contaminated properties once used for industrial and commercial purposes, are found in almost every community in America. The presence of these properties fuels urban sprawl, luring investment and job development farther from city centers and inner suburbs. While the full extent of the brownfields problem is unknown, the United States General Accounting Office (GAO/RCED-95-172, June 1995) estimates that approximately 450,000 brownfield sites exist in the United States. Brownfields represent by far the largest number of properties affected by concerns related to environmental contamination. These sites typically do not pose the type of risks found at Superfund National Priorities List (NPL) sites and best are addressed through local, State, or Tribal authorities. EPA long has realized that the assessment and cleanup of properties with potential or actual contamination is a shared responsibility. What matters most is that these sites are addressed as effectively and efficiently as possible.

The Administration believes that environmental protection and economic progress are inextricably linked. EPA's Brownfields Initiative plays a key role in the Administration's goal of building strong and healthy communities for the 21st century. The Initiative represents a comprehensive approach to empowering States, local governments, communities, and other stakeholders interested in environmental cleanup and economic redevelopment to work together to prevent, assess, safely clean up, and reuse brownfields. In many cases, local government environmental specialists are sitting down together with the city's economic development experts for the first time. Others are joining in—businesses, local residents, and community activists.

As the former Director of the Portland, Oregon, Brownfields Initiative said, "brownfields renewal is one of the most important environmental and economic challenges facing our nation's communities, calling for partnership among our Federal and local governments, businesses and community and environmental leaders. We must work together to build a national brownfields partnership from the ground up." The Agency's multi-faceted initiative represents a significant step forward by the Administration and, according to Renew America, represents "a new paradigm in locally based environmental protection that forges public-private partnerships, promotes innovation, and relies on market incentives and private sector actions."

Stakeholders tell the Agency that many Brownfields redevelopment activities could not have occurred in the absence of EPA efforts. For example:

- On an abandoned, four-acre railroad site, the city of Emeryville, CA., a development corporation constructed more than 200 units of residential housing. Approximately 100 construction workers were hired to build these housing units. Within the next 5 years, construction of retail, hotel and office complexes is expected to create as many as 10,600 jobs and nearly 4 million square feet of new facilities, and provide an additional \$6.4 million in annual property tax revenues.
- In Dearborn, MI, an abandoned property was redeveloped into a cardiology clinic valued at \$2.5 million and employing 16 people.
- In Shreveport, LA., as a result of \$1.3 million in cleanup and redevelopment funding, the former HICA steel foundry and upgrade company has been upgraded and renovated into the new HICA Steel Castings, LLC, with owners committed to running an environmentally safe operation in the Cedar Grove neighborhood of the city.

The initial Brownfields Action Agenda, announced on January 25, 1995, focused on the award of Brownfields Assessment Demonstration Pilots; building partnerships with all brownfields stakeholders; clarifying liability and cleanup issues; and, fostering local work force development and job training initiatives. By mid-1996, EPA completed all of its commitments on the initial Action Agenda, and the Agency continues to move forward. Let me briefly describe what we have done in the last 4 years.

#### ASSESSMENT PILOTS

Through pilots, and in partnership with a wide range of stakeholders, EPA provides technical assistance and seed money to local, State, and Tribal entities engaged in the revitalization of brownfields properties. The Brownfields Assessment Pilots have formed a major component of the Brownfields Initiative since its announcement. The Agency has announced 362 Brownfields Site Assessment Demonstration Pilots, funded at up to \$200,000 each, to States, Tribes, and communities.

Selected through a competitive process, Brownfields Assessment Pilots help communities to demonstrate the economic and environmental benefits of reclaiming brownfields properties, to explore ways of leveraging financial resources, and to model strategies for the organization of public and private sector support. Small towns and large cities both have been recipients of the grants. These pilots have resulted in the assessment of 1933 brownfield properties, cleanup of 130 properties, redevelopment underway at 184 properties, and a determination that 617 properties did not need additional cleanup. To date, over 6,400 jobs have been generated as a result of the program. Pilot communities have reported a leveraged economic impact of over \$2.3 billion.

#### REVOLVING LOAN PILOTS

As EPA works to implement a comprehensive brownfields strategy, the Agency has developed a "second-stage" type of brownfields pilot program. Those pilots, known as the Brownfields Cleanup Revolving Loan Fund (BCRLF) Pilots, are designed to enable eligible States, Tribes, and political subdivisions to capitalize revolving loan funds for use in the cleanup and sustainable reuse of brownfields. EPA's goal for these pilots is to develop revolving loan fund models that can be used by communities to promote coordinated public and private partnerships for the cleanup and reuse of brownfields. Eligible applicants for BCRLF pilots are entities previously awarded brownfield assessment pilots. In addition, coalitions formed among these entities and political subdivisions with jurisdiction over sites that have been the subject of a targeted brownfield pilot are eligible for BCRLF awards.

To date, 98 BCRLF pilots have been announced. These pilots represent 142 communities, and include pilot awards to individual eligible entities and to coalitions. Four BCRLF loans have been made in four communities—Stamford, CT, Las Vegas, NV, Trenton, NJ, and Shreveport, LA. The loan made in Las Vegas has resulted in the first complete cleanup. A \$50,000 loan cleaned up a former National Guard armory for reuse as a community and small business incubator.

#### JOB TRAINING PILOTS

To help local citizens take advantage of the new jobs created by assessment and cleanup of brownfields, EPA began its Brownfields Job Training and Development Demonstration Pilot program in 1998. To date, EPA has awarded 37 new pilots to applicants located within or near brownfield communities. For example, in Oakland, CA, the Oakland Private Industry Council has placed 96 participants in private industry jobs. Colleges, universities, nonprofit training centers, and community job

training organizations, as well as States, Tribes, and communities, were eligible to apply for these pilots.

#### BROWNFIELDS NATIONAL PARTNERSHIP

The Brownfields Initiative is clearly about partnerships—with other Federal, State, and local agencies, and a diverse array of stakeholders. The EPA has undertaken partnership efforts with individual States as well as through broad organizational structures like the U.S. Conference of Mayors, the National Governors Association (NGA), the National Association of Local Government Environmental Professionals (NALGEP), the Council for Urban Economic Development (CUED) and the U.S. Chamber of Commerce. EPA also forged working relationships with a vast spectrum of other stakeholders, including the Environmental Bankers Association, the Irvine Foundation's Center for Land Recycling, the International City/County Management Association (ICMA), to mention but a few.

#### *Federal Partners*

Early in the development of EPA's Brownfields Initiative, the Agency recognized the important contribution of many of our Federal partners to brownfields through their participation in the Brownfields National Partnership. Through the Partnership, Federal departments and agencies can offer special technical, financial, and other assistance that can be of great benefit to brownfields communities. More than 20 National partners are committing resources and assistance to brownfields. By the end of 1999, the partners estimate spending more than \$385 million for brownfields work, with another \$141 million in loan guarantees. The Federal Home Loan Bank System, for example, is exploring ways to bring more private investment to redeveloping brownfields properties and, along with the U.S. Conference of Mayors, has selected 50 cities to participate in a project to research opportunities, impediments, and successes by both cities and lenders to address brownfields.

Many of the commitments by our Federal partners were expressed through initial Memoranda of Understanding (MOUs). EPA has signed MOUs with the Economic Development Administration of the Department of Commerce, the Departments of Labor, Housing and Urban Development, and Interior, as well as the U.S. Army Corps of Engineers. EPA also is working with the Agency for Toxic Substances and Disease Registry and county health officials to address the health concerns of brownfields communities. Our partnership with EDA and HUD has been particularly beneficial for brownfields. EDA has provided more than \$178 million for brownfield redevelopment and the HUD Brownfields Economic Development Initiative (BEDI) grants program has provided \$50 million in assistance to cities to redevelop contaminated industrial and commercial sites and \$249 million in economic development loan guarantees to 44 communities. HUD anticipates that this funding will leverage almost \$1.4 billion in private and public funding.

#### *States and Tribes*

EPA continues to work closely with States and Indian Tribes as key partners in the cleanup and redevelopment of contaminated properties. The Administration supports the continued growth of the State and Tribal regulated and voluntary programs which have greatly expanded the number of sites cleaned up to protect human health and the environment. To date, 44 States have established voluntary cleanup programs. Recognizing the important role that State environmental agencies have in encouraging economic redevelopment of brownfields, EPA has provided \$28.6 million in funding to States and Tribes to support the development of these programs since fiscal year 1997. EPA plans to continue to provide \$10 million in fiscal year 2000 to promote the development or enhancement of State programs that encourage private parties to voluntarily undertake early protective cleanups of less seriously contaminated sites, thus accelerating their cleanup and redevelopment. EPA has entered into Memoranda of Agreement (MOAs) with 14 States to facilitate the cleanup of contaminated sites that generally pose lower risks than sites EPA would consider listing on the NPL. A MOA reflects mutual agreement by both the State and EPA with respect to the appropriate roles of these parties in conducting cleanup activities.

#### *Showcase Communities*

The centerpiece of the National Partnership is designation of 16 Brownfields Showcase Communities in 1998. These Showcase Communities are distributed across the country and vary in size, resources, and community background. EPA and its Federal partners are in the process of choosing 10 new Showcase Communities in anticipation of announcing their selection this October at the Brownfields 2000 Conference in Atlantic City, NJ. The Brownfields Showcase Communities

project is an outgrowth of those early partnership efforts and now forms an important component of the Brownfields Initiative. It represents a multi-faceted partnership among Federal agencies to demonstrate the benefits of coordinated, collaborative activity on brownfields.

The report, *Building A Brownfields Partnership from the Ground Up*, by the National Association of Local Government Environmental Professionals, (February 13, 1997), presented the views of a network of local government brownfields leaders on the value of EPA's brownfields programs and policies. The report calls local government leaders "a key link in the success of brownfields partnerships, for it is the environmental, health, development and political leaders in our cities, counties and towns who can best build a brownfields partnership "from the ground up." For example, through the Showcase Community in Glen Cove, New York, a revitalization plan to convert brownfields and Superfund sites into tourist destinations has been completed. State, Federal, and local agencies have played a crucial role in securing \$18 million in grants from various agencies. In addition, a prospective purchaser agreement was signed between EPA and the Glen Cove Industrial Development Corporation for the LI Tungsten and Captain's Cove Superfund sites. Proceeds from selling the property will go toward repaying response costs.

#### REMOVING BARRIERS TO REDEVELOPMENT—LIABILITY CONCERNS

Over the past several years, EPA has removed many of the liability uncertainties associated with brownfields properties. EPA is promoting redevelopment of brownfields properties by protecting prospective purchasers, lenders, and property owners from incurring Superfund liability, and by working with States through MOAs to clarify site responsibilities.

##### *Prospective Purchaser Agreements (PPAs)*

At some sites, the potential threat of liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) may be a barrier to the reuse of the property. Through agreements known as "prospective purchaser agreements," EPA assures that prospective purchasers will not be responsible for cleaning up sites, provided they do not further contribute to or worsen contamination. EPA's PPA guidance was issued in May 1995 (<http://es.epa.gov/oeca/osre/liabil.html>), and has been used to stimulate the development of sites where parties otherwise may have been reluctant to redevelop due to liability concerns. The 1995 guidance expanded the universe of sites eligible for such agreements to include sites where EPA has undertaken, is undertaking, or plans to undertake a response action. Prior to issuance of the 1995 guidance, EPA had entered into only 20 PPAs. In the last 5 years, EPA successfully has finalized over 100 additional PPAs. Further, in 1999, EPA took several steps to streamline the process of obtaining PPAs, including the appointment of a PPA Expediter, development of a system to track PPA negotiations, and issuance of a model letter to respond to PPA requests.

PPAs have brought about meaningful community benefits through fostering brownfields use. Redevelopment projects cover over 1500 acres, or 80 percent of the property secured through PPAs. EPA regional personnel estimate that nearly 1700 short-term jobs (e.g., construction) and over 1700 permanent jobs have resulted from redevelopment projects associated with PPAs. An estimated \$2.6 million in local tax revenue for communities nationwide have resulted from these projects.

##### *Comfort letters*

EPA has provided over 500 "comfort letters" (or "status letters") in appropriate circumstances to new owners, lenders, or developers to inform them of EPA's intentions at a site. The Policy on the Issuance of Comfort/Status Letters, issued in 1996 (<http://es.epa.gov/oeca/osre/961108.html>) is designed to assist parties who seek to cleanup and reuse brownfields. EPA often receives requests from parties for some level of "comfort" that, if they purchase, develop, or operate on brownfield property, EPA will not pursue them for the costs to clean up any contamination resulting from the previous use. The policy contains four sample comfort/status letters that address the most common inquiries EPA receives regarding contaminated or potentially contaminated properties.

##### *Property Owner Protections*

Other guidance issued by the Agency to benefit brownfields assessment, cleanup and redevelopment have included the "Policy Toward Owners of Property Containing Contaminated Aquifers" (<http://es.epa.gov/oeca/osre/950524-1.html>). Prior to the issuance of this guidance in July 1995, people owning property under which hazardous substances had migrated through groundwater also feared liability under the statute. EPA responded by announcing that it will not take enforcement actions

under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) against owners of property situated above contaminated ground water, provided the landowner did not cause or contribute to the contamination. EPA also will consider providing protection to such property owners from third party lawsuits through a settlement that affords contribution protection.

#### *Lender Protections*

EPA supported the "Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996," which clarified the liability of lenders, governmental entities that acquire property involuntarily, and fiduciaries under CERCLA and RCRA. The change in the law is providing significant relief to banks and lending institutions, expanding the availability of credit for small businesses, and greatly facilitating the assessment, cleanup, and redevelopment of brownfield sites. EPA's lender liability policy, issued in 1997 (<http://es.epa.gov/oeca/osre/970630.html>), clarifies the steps a lender or governmental entity may take after acquiring contaminated property through, for example, foreclosure or involuntary acquisition.

#### *Supplemental Environmental Projects*

EPA encourages the use of Supplemental Environmental Projects (SEPs) to facilitate the reuse of brownfields through assessment and cleanup projects at brownfield properties. SEPs are environmentally beneficial projects that a defendant agrees to undertake in settlement of a civil penalty action, but that the defendant is not otherwise legally responsible to perform. SEPs enhance the environmental quality of communities that have been put at risk due to the violation of an environmental law. In September 1988, EPA issued a fact sheet promoting the use of SEPs at brownfields sites (<http://es.epa.gov/oeca/osre/980930.html>).

SEPs at brownfields sites can be a catalyst to brownfields development. For example, a SEP provision within a consent decree negotiated with Sherwin Williams required the company to contract with the City of Chicago to perform an \$850,000 remediation project at a brownfields site in an Environmental Justice community near the facility.

#### *Removing Sites From CERCLIS*

Finally, EPA believes that the removal of sites from the active Federal inventory, the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS), is having positive repercussions for the Brownfields Initiative. To date, EPA has removed 32,191 sites (more than 75 percent of the total) from CERCLIS. The removal of these sites eliminates the stigma of potential contamination and fear of liability associated with these sites, and allows stakeholders to focus on the future land use and redevelopment of such sites.

#### BROWNFIELDS TAX INCENTIVE

EPA is pleased with the passage of the Brownfields Tax Incentive passed in the 105th Congress. Passage of the 1997 Brownfields Tax Incentive has enabled the Federal Government to level the economic playing field between brownfields and greenfield sites. Under the tax incentive, certain environmental cleanup costs for properties in designated areas are fully deductible in the year in which they are incurred, rather than capitalized. This incentive can reduce the capital cost for these types of investments by more than one half. We regard this tax provision as an essential element of a complete and comprehensive brownfields program and hope it can be made a continuing and broad tool for brownfields redevelopment in the future. Under current law, the incentive will expire on December 31, 2001. The President's fiscal year 2001 Budget request proposes to make it permanent.

The tax incentive is applicable to properties that meet specified land use, contamination, and geographic requirements. Both rural and urban sites qualify for the proposed incentive. Sites on or proposed for EPA's National Priorities List are excluded. In West Chester, Pennsylvania, the tax incentive was used to help a demolition and environmental service company relocate its headquarters at a brownfield. This site was in a part of the town suffering a 29.6 percent poverty rate, well above the 20 percent poverty rate threshold set in the guidelines. The company estimates that 100-200 jobs could be created, and that nearly \$42,000 would be returned to the company through the deduction.

#### BETTER AMERICA BONDS

Innovative approaches and solutions to the problems faced by communities are manifested in every aspect of brownfields. Innovative financing efforts are no exception. Just as the Federal Government has helped the brownfields program through the tax incentive, so too, will the Clinton Administration's latest effort through the proposed Better America Bonds program. This proposal for fiscal year 2001 seeks

to create \$10.75 billion in bonding authority for state, local, and tribal governments over 5 years. Communities will have access to zero-interest financing because investors who buy these 15 year bonds will receive Federal tax credits in lieu of interest paid by the bond issuers. The tax credits would total approximately \$700 million over 5 years. Communities would pay back the principal at the end of the 15-year term of the bond.

To help communities preserve greenspace for future generations, protect public health, and provide for greater economic development, Better America Bonds can be used for three purposes:

- Preserve and Enhance Open Space: State, Tribal and local governments can create, restore, or enhance parks, preserve greenspaces, and protect threatened farmland and wetlands. Land can be protected either by acquiring title or purchasing permanent easements.
- Protect Water Quality: Rivers, lakes, coastal waters, and wetlands—and drinking water sources—can be restored or protected through reducing polluted runoff, the largest remaining threat to the nations' waterways. Eligible projects to curb runoff include purchase of sensitive lands, wetlands restoration, and the creation of planted or forested buffer strips along waterways.
- Clean Up Brownfields: Pressure to develop greenspace can be eased through cleaning up and reusing brownfields. Communities can clean up brownfields for use as open space, or for economic redevelopment.

EPA believes Better America Bonds will further the Brownfields Economic Redevelopment Initiative by providing much needed flexible funding that communities can use for brownfields activities.

#### BROWNFIELDS LEGISLATION

The Clinton Administration supports the passage of targeted brownfields legislation and views it as an important step toward providing opportunities to local communities and neighborhoods that are struggling to clean up and develop abandoned commercial and industrial sites. We commend the committee for developing a good, bipartisan, bill. We advocate a legislative approach that clarifies liability provisions in the CERCLA statute for:

- prospective purchasers of contaminated property;
- innocent landowners; and
- contiguous property owners.

In addition to these responsible liability provisions, brownfields legislation should provide funding for brownfield assessment and cleanup through grants and loans. Further, the legislation should provide support for effective State Voluntary Cleanup Programs. At the same time, the Federal "safety net" must be preserved to address circumstances which may present an imminent and substantial endangerment to the public and the environment. Such an approach enjoys broad bipartisan support in Congress and would be valuable in speeding the cleanup of brownfields.

The Administration is pleased that S. 2700:

- Is modeled on the Administration's successful brownfields program. S. 2700 authorizes the use of brownfield grants for the full range of successful programs currently funded by EPA's brownfields program and improves on earlier proposals in providing EPA with better flexibility to manage this program. S. 2700 also more clearly exempts Federal facilities, except for facilities on Tribal lands, from the definition of "brownfields site."

- Provides liability protection for prospective purchasers and property owners
- S. 2700 clarifies that prospective purchasers of contaminated property, innocent landowners, and contiguous property owners, that meet the requirements of the bill, are not liable under Superfund.

- Does not undermine Superfund cleanup progress

S. 2700 does not contain comprehensive Superfund remedy or liability provisions that would delay the current cleanup progress in the Superfund program.

S. 2700 clearly represents a very positive step forward. We support the bill and the efforts of the committee to draft bipartisan brownfields legislation, consistent with the Administration's view on brownfields. The funding provisions promote the adoption of EPA/State Memorandum of Agreement (MOAs) or the development of minimum State criteria. Further, the bill requires a State to maintain a publicly available list of planned or completed sites in State Voluntary Cleanup Programs to be eligible for the bar on Federal enforcement authority. The bill has also strengthened the definition of "eligible sites" that are subject to an enforcement bar from prior bills.

While the Administration supports S. 2700, however, we believe there are improvements that need to be made to the bill. S. 2700 bars Federal enforcement for



response actions. However, the bill does not require minimum criteria for an adequate State program. We continue to believe that States should be required to demonstrate that their programs satisfy minimum criteria before Federal enforcement bars apply. In particular, there is no mechanism to ensure appropriate public participation in State cleanups or provide assurance through State review or approval that site cleanups are adequate. Both public participation and accountability are important to making good cleanup decisions. In addition, although S. 2700 includes a public list of sites at which the State has undertaken or is planning action, a site need not be on that list in order for the Federal enforcement bar to apply, and the list need not be current. A list that is updated more frequently than annually, as well as a clear link between the list and the enforcement bar, would strengthen the requirement.

Further, the "reopener" provision in S. 2700 that defines the circumstances in which Federal enforcement may be appropriate in State cleanup programs, requires the Administrator to determine that a release may present an "imminent and substantial endangerment" AND that additional response actions are likely to be necessary." This language is more restrictive than "imminent and substantial endangerment" enforcement provisions in other Federal environmental statutes and is likely to generate unnecessary and costly new litigation. It would be preferable to retain the existing CERCLA 106 standard of "imminent and substantial endangerment." We also believe that adequate protections must remain for situations when properties cleaned up to industrial use are thereafter developed for residential use. EPA must retain authority to respond to these potential threats to public health.

The Administration has other issues and technical comments that we would like to share with the committee as the bill continues through the legislative process. We would also like to work with you on appropriate resource levels consistent with the President's budget.

#### CONCLUSION

The Administration believes that an agreement can be reached with Congress on bipartisan, targeted brownfields legislation to promote the cleanup and reuse of brownfields sites across this country. We believe that S. 2700 represents a very positive step forward toward our mutual goals. We look forward to working with the committee to enact effective, protective, brownfield legislation this year.

#### STATEMENT OF HON. J. CHRISTIAN BOLLWAGE, MAYOR, ELIZABETH, NJ

I am J. Christian Bollwage, Mayor of Elizabeth, New Jersey. I am pleased to appear today on behalf of The United States Conference of Mayors, a national organization that represents more than 1,050 U.S. cities with a population of 30,000 or more. Within the Conference of Mayors, I serve as a member of the organization's Advisory Board, and I am a cochair of the Brownfields Task Force.

Mr. Chairman, Senator Lautenberg and other members of the committee, I am pleased to appear before you today to convey the Conference's support for the bipartisan brownfields proposal, the Brownfields Revitalization and Environmental Restoration Act of 2000 (S. 2700).

At the Conference's 68th Annual Meeting, which was held in Seattle earlier this month, the membership of the Conference approved a new policy statement conveying the support of the nation's mayors for S. 2700. I have attached a copy of this statement to my testimony.

#### *Overview*

I was pleased to have the opportunity to join with you today to discuss your proposed bipartisan legislation, which the mayors believe offers the best opportunity for successful legislative action in the Senate this year.

It seems that it was just the other day that I appeared before you and urged this panel to develop a bipartisan agreement. On behalf of the nation's mayors, I want to thank you for your responsiveness to our call for action.

For some time, the nation's mayors and others have pressed for a legislative response to the growing problem of brownfields. And, the Conference, speaking on behalf of the mayors, has appreciated the many opportunities to contribute to this committee's substantial record on these issues.

In our testimonies before this committee, the Conference has provided extensive views on the many benefits for the Nation from an expanded Federal policy commitment in this area. Earlier this year, I was pleased to provide the committee with our Third Annual Brownfields Survey, "Recycling America's Land", which dramati-

cally portrays the challenges before the Nation and the vast potential for all Americans if we can successfully reclaim and redevelop these sites. We believe that this survey is just the tip of the iceberg.

I also want to underscore how pleased we are that your efforts have secured a thoughtful and balanced bipartisan package on these issues. And, S. 2700 is a bill that responds directly to the key issues that have been identified by the Conference's member mayors.

We believe the legislation before you is the right way to get started on these issues. It delivers much needed financial tools and it sets forth a policy framework that we believe will help further local and state efforts to recycle America's land. And, we believe that the time has come to enact changes in Federal law to help us more effectively recycle America's land. Lets begin by reporting this legislation promptly to the full Senate, followed by full Senate action.

#### *S. 2700*

Let me talk specifically about S. 2700 and why we believe it warrants broad Senate support.

First, the legislation addresses the three key issues resources, liability relief and further clarification of state and Federal roles at brownfields sites we identified in our most recent statement before this committee. And, it does so in a manner that has garnered support from both public and private sector interests.

#### *On Funding*

- It provides communities with considerable flexibility in securing resources for both assessments and cleanup activities, allowing communities to seek site-specific resources or to support continuing local programs;
- It provides authority to access both grants and loan capitalization funds to meet varying conditions and status of properties within their communities;
- It provides varying means for communities to seek assistance directly, or in partnership with other communities in their area or through the state;
- It provides flexibility to communities to use a portion of these resources to monitor the health of populations in affected areas and the monitoring and enforcement of institutional controls; and
- It provides communities that have previously received brownfields loan capitalization funds with the authority to deploy these prior resources under the new rules set forth in the legislation; and
- It provides assurances that the distribution of these funds will serve more urban as well as rural needs.

In addition, we believe that the funding thresholds are well conceived, as well as the criteria EPA will follow in making awards under this program.

Mr. Chairman, I would hope that the committee would also monitor the progress of funding commitments to this program, and the success of local efforts, to ensure that the overall authorization level of \$150 million meets the demand for these resources.

#### *Liability Reforms*

On the liability reforms, I want to underscore our support for your proposals to protect innocent prospective purchasers and contiguous landowners.

The investment of public resources, which we believe is appropriate and necessary, will only carry the Nation so far. Liability reforms, as you have provided, are critical to our efforts to motivate the private sector developers, business owners, entrepreneurs, and others to take another look at previously developed land or brownfields for business startups or expansions, housing and other uses. These reforms underpin our efforts to tap the private sector to help us recycle these properties.

On prospective purchasers, S. 2700 follows the basic principles that have been articulated by mayors and others in seeking needed reforms to protect innocent purchasers of these sites. This legislation clearly delineates the thresholds for granting innocent parties certain relief from Superfund liability. And, these provisions generally follow other legislative proposals that have been before this committee and in the House.

Another area of liability relief provided in the legislation is for contiguous landowners. There is no category of landowner that is more innocent than those who has been threatened with Superfund liability due to their proximity to a contaminated site. It is essential that liability protections be extended to these parties.

#### *Future Land Uses/Institutional Controls*

I noted previously that S. 2700 provides local governments with the flexibility to use a portion of funding they receive to monitor and enforce institutional controls.

In addition, the legislation emphasizes the need for the states to maintain a public record of sites to help inform the public about the status of sites in local areas. This provision offers a means to deliver more assurances to the public that institutional controls are part of the public record.

On this provision, we would encourage you to consider prompting the state to deliver this information using contemporary technology through GIS formats on the Internet. The Conference supports such approaches, as we testified last year at the oversight hearings on TEA-21 implementation, urging that a similar approach be used by the states to show the public where TEA-21 resources are being invested. And, we would also ask that the information be formatted in a way to inform the public, rather than further stigmatizing these sites. The reuse of these properties is a very positive endeavor, and as such we should avoid stigmatizing these sites, which is one of the real challenges local areas already confront in redeveloping these sites.

#### *State Voluntary Cleanup Programs*

Finally, Mr. Chairman, let me offer some comments on provisions relating to State Response Programs.

As we testified previously, the provisions of S. 2700 respond to our recommendation that the committee provide additional funding support to strengthen state voluntary cleanup programs and ensure that these funds further build state capacity to address brownfields sites, not just emphasizing the more contaminated NPL-caliber properties. We believe that the provisions set forth in S. 2700 requesting that states describe these efforts is responsive to our request and doesn't constitute a burden on the states.

S. 2700 also provides additional certainty for parties who conduct cleanups under state programs, one of the key areas that has been identified by mayors and those from the private sector. We believe that by including this further clarification in the statute, it should begin to allay private concerns about the role of U.S. EPA relative to state decisions.

#### *Closing Comments*

Mr. Chairman, Senator Lautenberg, and members of the committee, let me conclude my remarks by again reiterating our support for your efforts to act in a bipartisan way on this legislation.

The leadership of this committee and your staff have worked hard to craft this legislative package that we believe will help move our brownfields to the next level. This legislation makes important policy reforms to accelerate the nation's progress in recycling our land. Congressional action on these important issues is long overdue.

Thank you for this opportunity to appear before you today.

#### RESOLUTION OF THE UNITED STATES CONFERENCE OF MAYORS

##### SUPPORTING SENATE BIPARTISAN ACTION ON BROWNFIELDS LEGISLATION

WHEREAS, the nation's mayors have pressed for bipartisan Congressional legislative initiatives to help communities recycle the many thousands of brownfield sites throughout this nation; and

WHEREAS, among the legislative elements of a broader Federal response to the national problem of the persistence and pervasiveness of brownfields in cities, towns and counties has been a call for increased funding commitments to cities for the assessment and cleanup of these sites; and

WHEREAS, the mayors have also identified liability reforms, providing protection for innocent parties, both public and private entities, in their efforts to recycle these sites; and

WHEREAS, the mayors have also sought further clarification in the relationship between the U.S. Environmental Protection Agency and the states in decisions and other actions regarding the cleanup and redevelopment of these sites; and

WHEREAS, key leaders in the Senate, led by Senators Lincoln Chafee, Frank Lautenberg, Robert Smith and Max Baucus, recently introduced a bipartisan legislative proposal, the "Brownfields Revitalization and Environmental Restoration Act", which substantively deals with these key concerns,

NOW, THEREFORE BE IT RESOLVED that The U. S. Conference of Mayors supports the "Brownfields Revitalization and Environmental Restoration Act" and urges the Senate to move forward promptly on this bipartisan initiative to help ensure that final Congressional action occurs this year on a brownfields reform package; and

BE IT FURTHER RESOLVED that The U.S. Conference of Mayors urges its members to secure Senate cosponsors for this legislation to demonstrate the strong support of the nation's mayors for action on this legislation.

Passed June 12th, 2000 The 68th Annual Conference of Mayors Seattle, Washington

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STATEMENT OF PRESTON A. DANIELS, MAYOR OF DES MOINES, IOWA, ON BEHALF OF THE: NATIONAL ASSOCIATION OF LOCAL GOVERNMENT ENVIRONMENTAL PROFESSIONALS "NALGEP"

#### *Introduction*

Mr. Chairman and distinguished members of the subcommittee, my name is Preston Daniels, and I am the Mayor of the City of Des Moines, Iowa. Thank you for inviting me to testify today on behalf of the National Association of Local Government Environmental Professionals, or "NALGEP." NALGEP appreciates the opportunity to present this testimony on the views of local government officials from across the Nation on the need for Federal brownfields legislation to support the cleanup, redevelopment and productive reuse of brownfields sites. Today, I wish to convey how S. 2700, the "Brownfields Revitalization and Environmental Restoration Act of 2000," would meet the needs of American communities to promote brownfields revitalization.

NALGEP represents local government officials responsible for ensuring environmental compliance, and developing and implementing environmental policies and programs. NALGEP's membership consists of more than 135 local government entities located throughout the United States. Our members include many of the leading brownfields communities in the country such as Des Moines, Providence, Trenton, Richmond, Rochester, Portland, Chicago, Los Angeles, Salt Lake City, Dallas, and Cuyahoga County, Ohio, to name a few.

In 1995, NALGEP initiated a brownfields project to determine local government views on national brownfields initiatives such as the EPA Brownfields Action Agenda. The NALGEP brownfields project culminated in a report, entitled Building a Brownfields Partnership from the Ground Up: Local Government Views on the Value and Promise of National Brownfields Initiatives, which was issued in February, 1997. That report called for new Federal resources to support brownfields revitalization, particularly cleanup. The report also called for new liability clarification, as well as authority for states to take a lead in voluntary brownfields cleanup. As this committee knows, local governments have sought Federal brownfields law for many years now.

During the past few years, NALGEP has continued its work on brownfields through coordinating projects involving local officials to address the following issues: (1) Brownfields Cleanup Revolving Loan Funds; (2) use of HUD Community Development Block Grants for Brownfields; (3) partnerships between business and local government officials to reduce sprawl and promote smart growth; and (4) implementation of the Administration's Brownfields Showcase Community initiative. As a result of these efforts, NALGEP is well qualified to provide the committee with a representative view of how local governments, and their environmental and development professionals, believe the Nation must move ahead to create long-term success in the revitalization of brownfields properties.

NALGEP's testimony today will focus on the following areas: (1) the urgent need for increased Federal funding to support the assessment, cleanup and redevelopment of brownfields sites across the country; (2) the need for liability clarification to encourage states and the private sector to step forward and revitalize more sites; (3) the need for Federal brownfields legislation to provide funding for the cleanup of brownfields blighted by lead, asbestos and petroleum; and (4) the need to facilitate the participation of other Federal agencies, such as the Army Corps of Engineers, in local brownfields initiatives. Overall, our view of the opportunity created by S. 2700 is straightforward this bill provides critical, positive support to local governments who badly need Federal resources and assistance for the revitalization of America's brownfields. I would also note that both of my senators, Senator Grassley and Senator Harkin, are cosponsors of S. 2700.

The cleanup and revitalization of brownfields represents one of the most exciting, and most challenging, environmental and economic initiatives in the nation. Brownfields are abandoned, idled, or under-used properties where expansion or redevelopment is hindered by real or perceived contamination. The brownfields challenge faces virtually every community; experts estimate that there may be as many as 500,000 brownfields sites throughout the country.

The brownfields issue illustrates the connection among environmental, economic and community goals that can be simultaneously fostered through a combination of national leadership, state incentives, and the innovation of local and private sector leaders. Cleaning up and redeveloping brownfields provides many environmental, economic and community benefits including:

- expediting the cleanup of thousands of contaminated sites;
- renewing local economies by stimulating redevelopment, creating jobs, expanding the local tax base, and enhancing the vitality of communities; and—limiting sprawl and its associated environmental problems such as air pollution, water pollution, traffic and the development of rapidly disappearing open spaces especially impacts on the heartland's prime farmland.

#### *Des Moines Brownfields Initiatives*

The City of Des Moines is impacted by brownfields, and is seeking partnership with the Federal Government to revitalize its brownfields and create new opportunity for our citizens. With the business community, key Federal and state agencies, and civic organizations, Des Moines is demonstrating how turning its brownfields into waterfront and mixed-use developments, new manufacturing, and recreational and open spaces can keep Des Moines a livable city, empower distressed communities, and avoid the sprawling of the metropolitan region into the area's precious farmland. In addition, Des Moines' brownfields efforts demonstrate the value of Federal support, as U.S. EPA's resources and assistance to my City have made a critical difference in our ability to revitalize our blighted brownfields sites. EPA has been a spark that has fueled the brownfields flame in our community.

Des Moines has a solid track record in brownfields, as demonstrated by the successful revitalization of the Guthrie Avenue Business Park a \$30 million, 815,000 square feet office/warehouse/manufacturing project on a formerly contaminated site. The City is also underway with Phase II environmental assessment and cleanup plans for the 1200-acre Des Moines Agribusiness Park, which will accommodate the growth of value-added agribusinesses and assist in positioning Iowa as the Food Capital of the World. The Ag-Park is expected to add \$250 million to the tax base and create 7,000 new jobs.

Des Moines is also seeking to assess, clean up, and redevelop the Riverpoint West area in downtown Des Moines. The 300-acre Riverpoint West area is located directly south of the Central Business District, north of the Raccoon River, in a census tract with a 37.8 percent poverty rate. Prior uses in the Riverpoint area have included but are not limited to rail yards; newspaper and magazine printing; tanning; asphalt paving; paint manufacturing; limestone, coal and coke yards; foundry operations; iron works and industrial chemical manufacturing. Soil and groundwater concerns are evident, and there are tremendous land disturbances throughout this area. Construction and demolition debris, metal drums with unknown contents, straw, glass and broken tile have been deposited. The redevelopment challenge not only involves determining the nature and extent of environmental contamination, but also assessing the geotechnical constraints that may limit construction density and affect the economic viability of the project.

In partnership with the Greater Des Moines Partnership (comprised of 17 chambers of commerce and business associations), the City will revitalize this environmentally contaminated industrial area into a mixed-used urban village with approximately 1,000 residential units, 850,000 square feet of low-rise office and retail space, and environmental and recreational enhancements along the riverfront. By creating an interconnection with the adjacent Central Business District, Riverpoint West can advance the success of downtown redevelopment initiatives by meeting needs for workers and new consumers, providing parking, and offering support services. Moreover, the revitalization of Riverpoint West will be coordinated with the recycling of the adjacent DICO Superfund site into essential parking and transportation facilities. A Phase I assessment and an initial economic feasibility study have been completed, and Des Moines is ready to begin Phase II testing on 175 acres. Several local developers have indicated their serious interest in redevelopment opportunities. When completed, this revitalization project is expected to create 1,000 jobs and increase the tax base twelvefold from approximately \$12 million to more than \$140 million in the Riverpoint West area alone, not even taking into account the positive economic reinvestment that can spread throughout downtown Des Moines.

Although Des Moines has already made great progress, success in achieving the community's vision to revitalize Riverpoint West will require substantial additional resources and support, including from the Federal Government. Des Moines is facing daunting challenges and expense at the Riverpoint West area, which needs fur-

ther environmental assessment and geotechnical exploration; significant environmental remediation; substantial site preparation for development; and flood control and aquatic ecosystem restoration assistance. Clearly, the Federal Government has a role to play, and Federal legislation for brownfields revitalization could make a major difference for our revitalization plans. And, the time is now for new national brownfields incentives, while the economy is strong and when this legislation can make a positive difference on the market feasibility of blighted urban sites.

*The Proposed Legislation Will Meet Local Government Needs for Federal Brownfields Incentives*

Local governments across America need Federal incentives and assistance for brownfields revitalization. Priority needs include funding for assessment and cleanup, liability clarification for parties who can foster the cleanup of brownfields, and clear authority for state-led brownfields cleanups.

*I. Ensuring Adequate Resources for Brownfields Revitalization*

As Des Moines' efforts to revitalize the Riverpoint West area clearly demonstrate, local governments need additional Federal funding for site assessment, remediation and economic redevelopment to ensure long-term success in revitalizing our brownfields. The costs of site assessment and remediation can create a significant barrier to the redevelopment of brownfields sites. In particular, the uncertainty associated with brownfields sites pose an initial obstacle that drives development away from brownfields sites. With this initial obstacle removed, localities eliminate uncertainty, save time, and are much better able to put sites into a development track. In addition, the allocation of public resources for site assessment can provide a signal to the development community that the public sector is serious about resolving liability issues at a site and putting it back into productive reuse. In fact, the resources provided to Des Moines through the EPA brownfield assessment pilot program are what enabled the City to get serious about the redevelopment of our priority brownfield sites. Without this help, many brownfields will continue to blight communities across America and encourage sprawling patterns of development.

Likewise, resources for cleanup are the missing link for many brownfield sites a link that keeps brownfields from being redeveloped into productive areas in many communities like Des Moines. Although the private sector has a key role to play in brownfields cleanup, the catalyst of Federal cleanup dollars is needed at many sites to leverage private cleanup funds and to help level the development playing field between brownfields and our precious open spaces and agricultural lands. The use of public funds for the assessment and cleanup of brownfields sites is a smart investment. Public funding can be leveraged into substantial private sector resources. Investments in brownfields yield the economic fruit of increased jobs, expanded tax bases for cities, and urban revitalization. And the investment of public resources in brownfields areas will help defer the environmental and economic costs that can result from unwise, sprawling development outside of our urban centers.

The \$150 million in annual Federal funding for brownfields revitalization provided in S. 2700 will go a long way toward helping communities make progress on this daunting brownfields problem. Furthermore, S. 2700 properly recognizes a wide variety of local entities as eligible entities for Federal brownfields funding, including not only local governments, states and tribes, but also local development agencies, regional economic development districts, and other entities that play key roles in local brownfields revitalization. The following types of Federal funding will help local communities continue to make progress in revitalizing our brownfields sites:

- Grants for Site Assessments and Investigation: EPA's Brownfields Assessment Pilot grants have been extremely effective in helping localities to establish local brownfields programs, inventory sites in their communities, investigate the potential contamination at specific sites, and educate key stakeholders and the general public about overcoming the obstacles to brownfields redevelopment. Additional funding for site assessments and investigation is needed to help more communities establish local brownfields programs and begin the process of revitalizing these sites in their communities. S. 2700 recognizes the value of Federal funding for brownfields assessments, and appropriately provides money for the development of local assessment programs, as well as for targeted brownfields assessment activities.
- Grants for Cleanup of Brownfields Sites: There is a strong need for Federal grants to support the cleanup of brownfields sites across the country. The U.S. Conference of Mayors' recent report on the status of brownfields sites in 223 cities nationwide indicates that the lack of cleanup funds is the major obstacle to reusing these properties. For many brownfields sites, a modest grant targeted for cleanup can make the critical difference in determining whether a site is redeveloped, creating new jobs, tax revenues and return on investment, or whether the site remains

polluted, dangerous and abandoned. The approach in S. 2700 recognizes this critical funding need, and appropriately provides for direct grants for cleanup, based on considerations including the protection of greenspace and parks, and the re-use of existing infrastructure. NALGEP emphasizes the importance of the subcommittee's recognition of the connection between brownfields redevelopment and smart growth in our local communities.

- **Grants to Capitalize Brownfields Cleanup Revolving Loan Funds:** In addition to grants, Federal funding to help localities and states to establish revolving loan funds (RLFs) for brownfields cleanup is another effective mechanism to leverage public and private resources for redevelopment. EPA deserves credit for championing brownfields RLFs as a mechanism for helping communities fill a critical gap in cleanup funding. Likewise, S. 2700 provides needed improvements to the RLF program, by enabling EPA to separate cleanup grants for loan funds from the burdensome and unnecessary requirements of the Superfund National Contingency Plan that have hindered the effective use of RLF funds thus far.

## *II. Liability Clarification at Brownfields Sites*

On the issue of Federal Superfund liability associated with brownfields sites, NALGEP has found that the Environmental Protection Agency's overall leadership and its package of liability clarification policies have helped establish a climate conducive to brownfields renewal, and have contributed to the cleanup of specific sites throughout the nation. Congress can enhance these liability reforms by further clarifying in legislation that Superfund liability does not apply to certain "non-responsible" parties such as innocent landowners, prospective purchasers and contiguous property owners. S. 2700 clearly addresses these issues, and overcomes a hurdle that has kept innocent parties from voluntarily cleaning brownfields sites.

## *III. Enhancing the Role of the States in Brownfields Cleanup, Improving State Programs, and Keeping the Safety Net of EPA Protection*

Addressing the American brownfields problem will require Federal law that provides effective State brownfields cleanup programs with the authority to foster cleanups and clarify liability at these sites. Moreover, resources and support are needed to improve the effectiveness of many state brownfields cleanup programs. At the same time, the law must preserve the ability of U.S. EPA to protect citizens and local governments from bad cleanups and ineffective state programs. The approach proposed by S. 2700 puts forth a well crafted, workable approach that can help foster increased brownfields revitalization.

It is clear that effective brownfields likely to take place in states with effective voluntary cleanup programs. NALGEP has also found that states are playing a critical lead role in promoting the revitalization of brownfields. More than 40 states have established voluntary or independent cleanup programs that have been a primary factor in successful brownfields cleanup, including my home state of Iowa. The effectiveness of state leadership in brownfields is demonstrated by those 14 states that have taken primary responsibility for brownfields liability clarification pursuant to Superfund "Memoranda of Agreement" (MOAs) with U.S. EPA. These MOAs defer liability clarification authority to those states, and have resulted in increased brownfields activities in local communities that can make use of these state-EPA agreements.

The Federal Government should further encourage states to take the lead at brownfields sites. States are more familiar with the circumstances and needs at individual sites. A state lead will increase local flexibility and provide confidence to developers, lenders, prospective purchasers and other parties that brownfields sites can be revitalized without the specter of Superfund liability or the involvement of Federal enforcement personnel. Parties developing brownfields want to know that the state can provide the last word on liability, and that there will be only one "policeman," barring exceptional circumstances. Moreover, it is clear that U.S. EPA lacks the resources or ability to provide the assistance necessary to remediate and redevelop the hundreds of thousands of brownfields sites in our communities.

S. 2700 provides that EPA will not take Superfund enforcement or cost recovery action against a person who is conducting or has completed a response action regarding the specific release that is addressed by the response action that is in compliance with a State program that specifically governs response actions for the protection of public health and the environment. The approach taken by S. 2700 will help effective State brownfields programs to take a lead in brownfields cleanup, and give confidence to brownfields developers that they can get the job done.

At the same time, local officials are also concerned that citizens need to be protected from inadequate brownfields cleanups, in which a state program does not effectively protect public health or in other exceptional circumstances. States vary in

the technical expertise, resources, staffing, and commitment necessary to ensure that brownfields cleanups are adequately protective of public health and the environment. If brownfields sites are improperly assessed, remediated or put into reuse, it is most likely that the local government, will bear the largest impact from any public health emergency or contamination of the environment. Thus, it is important to keep the safety net of U.S. EPA Superfund authority intact for those exceptional circumstances in which a state needs help at a particular brownfields cleanup, the sites presents an imminent and substantial threat to health or the environment, or in other limited situations. The approach in S. 2700 keeps this important safety net for our citizens and the environment in place, and provides a balanced and workable state-Federal approach.

The approach provided in S. 2700 goes even further, by providing resources and assistance to enable States to develop and improve their brownfields cleanup programs, so that brownfield cleanups are effective and circumstances of public health threat remain truly exceptional. By tying grants to States for the enhancement of cleanup programs to criteria to ensure that the state programs have adequate provisions for meaningful public participation, enforcement, and mechanisms for the approval of cleanups, S. 2700 will help promote state leadership on brownfields cleanup.

#### *IV. Addressing the Local Need to Clean Up Brownfields with Lead, Asbestos, and Petroleum Contamination*

NALGEP suggests one major improvement for the proposed brownfields legislation, which is needed to address a priority local problem—the cleanup of brownfields impacted by petroleum, or by lead and asbestos in the structures of buildings.

Under the current law and agency programs, these pollutants are excluded from Federal brownfields assistance. These environmental contaminants are some of the most difficult problems facing local communities in their public health protection and revitalization. Abandoned gas stations, housing with severe lead paint hazards, and buildings contaminated with asbestos blight communities across America, and represent a top local priority for cleanup. In fact, EPA reports that there are nearly 200,000 abandoned gas stations in the United States.

“Brownfield sites” with these pollutants should be eligible for funding. Local governments should be granted the flexibility to direct their brownfields resources, including Federal funds provided by S. 2700, to their priority brownfields projects, including those that are blighted by petroleum, lead or asbestos. In addition, these sites should also be eligible to take advantage of the liability protections offered to innocent landowners, prospective purchasers, and contiguous property owners.

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At the same time, local officials are also concerned that citizens need to be protected from inadequate brownfields cleanups, in which a state program does not effectively protect public health or in other exceptional circumstances. States vary in the technical expertise, resources, staffing, and commitment necessary to ensure that brownfields cleanups are adequately protective of public health and the environment. If brownfields sites are improperly assessed, remediated or put into reuse, it is most likely that the local government will bear the largest impact from any public health emergency or contamination of the environment. Thus, it is important to keep the safety net of U.S. EPA Superfund authority intact for those exceptional circumstances in which a state needs help at a particular brownfields cleanup, the sites presents an imminent and substantial threat to health or the environment, or in other limited situations. The approach in S. 2700 keeps this important safety net for our citizens and the environment in place, and provides a balanced and workable state-Federal approach.

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#### *VIII. Facilitating the Participation of Other Federal Agencies in Brownfields Revitalization*

The cleanup and redevelopment of a brownfields site is often a challenging task that requires coordinated efforts among different government agencies at the local, state and national levels, public-private partnerships, the leveraging of financial resources from diverse sources, and the participation of many different stakeholders. Many different Federal agencies can play a valuable role in providing funding, tech-

nical expertise, regulatory flexibility, and incentives to facilitate brownfields revitalization. For example, HUD, the Economic Development Administration, the Department of Transportation, and the Army Corps of Engineers have all contributed important resources to expedite local brownfields projects. The U.S. EPA and the Administration have provided strong leadership through the Brownfields Showcase Community initiative that is demonstrating how the Federal Government can coordinate and leverage resources from many different Federal agencies to help localities solve their brownfields problems.

Congress can help strengthen the national brownfields partnership by further clarifying that the various Federal partners play a critical role in redeveloping brownfields, and by encouraging the agencies to meet local needs and to create innovative new approaches. For example, Congress should be commended for legislation passed in 1998 to clarify that HUD Community Development Block Grant funds can be used for all aspects of brownfields projects including site assessments, cleanup and redevelopment. This simple step has cleared the way for communities across the country to use these funds in a flexible fashion to meet their specific local needs. In addition, Congress has provided \$25 million in each of the past 2 years for HUD's Brownfields Economic Development Initiative.

Similarly, Congress should consider clarifying that it is appropriate and desirable for the Army Corps of Engineers to use its resources and substantial technical expertise for local brownfields projects. In Des Moines, for instance, we need the Corps of Engineers' help to succeed in our revitalization of the Riverpoint West area, which is severely impacted by flooding, environmental contamination, and the need for restoration of the local aquatic ecosystem. The Corps of Engineers is already conducting a major flood control study for Riverpoint West, and Des Moines is seeking to expand this study to address ecosystem and environmental contamination issues.

I understand that the Administration has proposed a new authority in the Water Resources Development Act 2000 legislation for brownfields cleanup, in order to protect the water quality and promote the revitalization of communities across the nation. Likewise, Senator Chafee has introduced S. 2335, the "State and Local Brownfields Revitalization Act of 2000," which also provides the Corps with clear authority to conduct brownfields activities along America's waterways. NALGEP believes this is an excellent proposal that will make a big difference for our city and many other communities.

Congress also should work with EPA and the Administration to determine how other agencies can help facilitate more brownfields revitalization. By taking these steps, Congress can give communities additional tools, resources, and flexibility to overcome the many obstacles to brownfields redevelopment.

#### *Conclusion*

Senator Robert Kennedy once declared "give me a place on which to stand, and I shall move the earth!" The people of America, the people of our local communities, people in this Congress, are standing up on our brownfields and in our streets and in our neighborhoods and we are shouting, let's move the earth! Let us take these places that have been abandoned, and let us turn them back to jobs and business and parks and homes. Let us show that we can bring business people and environmental groups and City Hall and the Federal agencies together toward a common, exciting goal. Let us work together to let entrepreneurship thrive. Let us take this notion that jobs and the environment are a tradeoff, and recycle it into a new notion of livable communities where these goals are linked and supportive of each other. And let's do it now.

In conclusion, local governments are excited to work with the Federal Government to promote the revitalization of brownfields, through a combination of increased Federal investment in community revitalization, further liability clarification, and other mechanisms to strengthen the national partnership to cleanup and redevelop our communities. On behalf of NALGEP, I thank the subcommittee for this opportunity to testify, and we would be pleased to provide further input as the process moves forward.

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STATEMENT OF JAN H. REITSMA, DIRECTOR, RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

#### *Introduction*

Good afternoon Mr. Chairman and members of the committee. My name is Jan Reitsma. I am the Director of the Rhode Island Department of Environmental Management. I appreciate the opportunity to speak to you today regarding Rhode Island's perspectives on, and support of, Senate bill S. 2700 on Brownfields.

I would like to commend Senator Chafee and the other committee members for crafting a Brownfields bill that has bi-partisan sponsorship and addresses many of the concerns we have had with the Superfund program. I am also pleased to see that the tremendous effort invested in cleaning up this country's contaminated sites by the late Senator John Chafee is being continued by this subcommittee and its chairman, Senator Lincoln Chafee. Rhode Islanders are proud to see our Senator continuing to lead the effort to improve the Superfund and Brownfields programs.

Summary Rhode Island strongly supports Senate bill S. 2700 as a much needed and significant step forward toward improving the Superfund program, and particularly as a measure that would give us the additional backup, tools and flexibility to carry out our Brownfields program at the state and local levels. The proposed statutory changes would address the most frequently encountered obstacle to closing a Brownfields deal, lack of finality, even when the State has negotiated a comprehensive agreement and is willing to provide liability relief. The funding aspects of the bill are also of great interest to us, including the funding for actual cleanup work in addition to existing programs that focus onsite investigation and inventories, and funding that will help develop capacity at the municipal level to deal with the complexities of Brownfields redevelopment. At least as important is the new funding for projects that restore Brownfields to a public use, such as a waterfront park, and that, unlike commercial redevelopment projects, do not have the revenue stream to pay off loans. Together, these provisions will greatly enhance the State's ability to expand on its efforts to date and to realize the full potential of Brownfields redevelopment as we seek to revitalize our urbanized communities, improve and preserve our quality of life, and promote sustainable economic growth statewide. Finally, the bill strikes a reasonable balance between giving the States more flexibility and more of a lead role on the one hand, and requiring accountability from the States on the other.

*Background: The Rhode Island Perspective on Brownfields*

Brownfields present a tremendous challenge in Rhode Island. Prior to 1991, Rhode Island had relied exclusively on the Superfund program and our RCRA hazardous waste management program to address sites contaminated with chemicals and petroleum. Unfortunately, we were discovering sites at a rate faster than those programs could address them. After evaluating the pace of discovery of new sites and the backlog of sites that existed at that time, we decided to follow the lead of several other States and establish our own state program. Through a collaborative stakeholder effort, Rhode Island promulgated its site remediation regulations in 1993 and the pace of cleanup throughout the state quickly accelerated. Those regulations lay out a process for notification, investigation, and remediation of contaminated properties. It is a flexible process designed to be adapted to the many types of contaminated sites that we have encountered. While these new regulations and the alternative regulatory framework that they provide to responsible parties clearly increased the amount of cleanup in the State, we believe that it is the continuing threat of listing in the Superfund program, coupled with our own enforcement actions, that provide the impetus for cooperation.

In 1995, Governor Lincoln Almond proposed the Industrial Property Remediation and Reuse Act, or the Rhode Island Brownfields bill, to build on the early successes of our State program and provide more tools to facilitate the cleanup of contaminated sites and support their return to beneficial use in the community. This bill was passed into law with overwhelming support by the legislature and provides DEM with the ability to enter into Settlement Agreements, which include Covenants Not to Sue, with performing parties. While the law provides specific relief from liability to bona fide perspective purchasers and secured creditors, it also allows other performing parties, including cooperative responsible parties, to enter into Settlement Agreements. These new tools prompted the cleanup and redevelopment of 48 sites, restoring 532 acres of contaminated property and creating or retaining 1010 jobs and \$76.9 million dollars in property and income tax annually. The key aspect of this program improvement was the certainty and finality that the law and the Settlement Agreements provided to performing parties.

Further program improvements came in 1997 with the amendment of the site remediation regulations to include a series of cleanup standards proportionate to the future use of properties. These amendments added three options for a performing party to use to determine the end goal of their cleanup. The first option, or tier, involves a series of tables for performing parties to use to look up the appropriate cleanup goals corresponding to the groundwater classification and future use of the site. The second tier provides an accepted model where performing parties could input unique, site specific information to come up with a site-specific goal. Finally,

the third tier preserved the traditional risk assessment option. The selection of the method is left to the performing party.

The end result of these efforts is our existing program, which provides us with all the regulatory tools needed to respond to proposed projects, compel the investigation and remediation of sites, and support redevelopment efforts involving Brownfields. These regulations, however, strictly address the Department's reaction to issues presented to us through either notification of contamination or other proposed projects.

The need to support economic redevelopment in Rhode Island's urban, and historically industrial, communities and initiate cleanup activities in these areas prompted Rhode Island's effort to seek a Brownfields Demonstration Pilot grant from EPA in 1996. The pilot was focused on a proactive approach, undertaken with many municipal and economic development partners, to identify Brownfields sites, assess their condition, estimate the costs of cleanup, and support the marketing of the sites for reuse. The project was an ecosystem based approach to identifying vacant or underutilized sites along the Blackstone and Woonasquatucket Rivers. Rhode Island was awarded a two hundred thousand dollar grant in 1997, which the State matched with an additional two hundred and ten thousand dollars. To date 54 baseline site assessments and 8 Remedial Evaluation Reports (which include cost estimates for cleanup) have been completed at Brownfields sites in the pilot area. Also, and perhaps more importantly, a healthy dialog and productive working relationship has been established between the economic development agencies, the Department of Environmental Management and the municipalities.

In 1998, our proactive Brownfields efforts were supplemented by the designation of Providence as a Brownfields Showcase Community. This designation provided a higher level of involvement by EPA and several other Federal agencies, most notably Housing and Urban Development, in supporting the reuse of contaminated sites in Providence.

Recent efforts under the Brownfields Pilot and Showcase Community projects have primarily been focused on supporting the investigation and cleanup of properties along the proposed route of the Woonasquatucket River Greenway and bike path. The investigation and remedial design activities have largely been completed but securing funding for the remediation has proved to be a major problem. The funding problem mainly is due to the fact that the properties of concern, the former Lincoln Lace and Braid and the former Riverside Mills properties, are designated for use as open space, bike path areas, and other recreational facilities, and do not have a future income stream to support a loan to fund remediation costs. The current lack of funding support for projects of this type, i.e. restoration to a natural resource or public use function rather than commercial redevelopment, has slowed progress on this very important project.

We have leveraged our success and relationships developed under the pilot and Showcase Community projects to approach other municipalities and support their Brownfields redevelopment efforts across the State. In addition, DEM and the Rhode Island Economic Development Corporation were recently awarded a \$1,000,000 grant to establish a statewide revolving loan program to assist in the funding of remediation costs.

The evolution of our State program is in many ways similar to the process other States have followed. Each State has adjusted its approach somewhat to meet the needs and desires of its constituencies and to strive for the most efficient and effective models based on its particular circumstances. This has led to many innovative approaches supporting the cleanup of thousands of sites of all shapes and sizes nationally.

#### *Rhode Island's Support of Senate Bill S. 2700*

Senate Bill S. 2700 provides a strong Federal parallel to the Brownfields statutes and programs adopted in Rhode Island and other States. While administrative reforms to Superfund have provided much improvement and relief in our efforts to bring these sites back to beneficial reuse, those efforts have been limited by the confines of the existing CERCLA statute. S. 2700 incorporates many of the concepts espoused in Superfund administrative reforms directly into the statute and expands the boundaries of CERCLA to address some of the obstacles to cleanup and redevelopment that are created by the existing law.

Funding is addressed in S. 2700. Cooperative agreements for site investigations, characterization, and inventory are specifically outlined in the bill and revolving loan funds are established and funded. In addition to reaffirming these existing programs in the statute, S. 2700 includes provisions for financial assistance in remediation of Brownfields. One of the most frequent barriers cited when negotiating

Brownfields project agreements is the lack of funding assistance for the actual cleanup work.

We also support and applaud the provisions of S. 2700 that provide funding to develop the capacity for local government agencies to evaluate, clean up and redevelop Brownfields properties. Our experiences, as well as the experiences of States across the country, show that the most effective projects include active participation and support from the local government in partnership with State, Federal and private partners. This investment in developing more program expertise at the municipal level is money well spent.

A key provision of S. 2700 establishes grants for properties where the projected future use is for the public benefit, and there is not an anticipated future income stream to repay a loan. This provision recognizes the full potential of brownfields to contribute to the revitalization of our urban areas. These areas have typically suffered loss of jobs and tax revenue, but also loss of environmental quality. Brownfields offer not only an opportunity for economic revitalization, but also for environmental improvements, from parks and trails to wetlands restoration. Both types of improvements are critical to improving the quality of life in our urbanized communities. In Rhode Island, the Almond Administration has consistently made this a top priority. The State has invested heavily in urban parks, greenways and bike paths and our watershed protection efforts focus as much on our urban watersheds as the more pristine, rural areas of the state. And of course, we now know that improving the quality of life in our cities is an absolutely necessary ingredient of any effort to control sprawl, limit unplanned and uncontrolled development in our suburban and rural communities, and develop more sustainable growth patterns.

Although the \$150 million allocated for these new purposes is small in comparison to the magnitude of the challenges we face nationally, we support this investment as a tremendous step forward. It will help the States integrate Brownfield properties more fully in our efforts to revitalize our urban economies, improve the quality of life both in our urban, suburban and rural communities, and promote Smart Growth statewide.

S. 2700 provides relief to innocent parties, including the owners of contiguous properties, bona fide prospective purchasers, and down gradient receptors. Rhode Island has historically provided these parties with relief from liability through statutory protection or enforcement discretion provided that they cooperate with ongoing investigations and provide access. We have seen areas in our cities and towns become virtual dead zones because they are in close proximity to contaminated sites. The fear of liability spilling over from one property to another has pushed people to look elsewhere when considering expansion or relocation of their businesses or activities. We believe the proposed statutory changes incorporate fairness and reasonableness into the liability structure of the program and will facilitate economic activity around contaminated sites. Furthermore, the windfall lien provisions will protect the taxpayer's investment in Brownfields properties and will eliminate the potential of owners of contaminated sites profiting inappropriately from government efforts to support redevelopment through assessment or cleanup.

Perhaps the most significant and potentially beneficial aspects of S. 2700 are the provisions included in Title III on the State Role. We support the provisions in Title III that prevent a Federal enforcement action that would be duplicative of the State's oversight role. While we recognize that the Superfund program has evolved away from the duplication of effort and heavy-handed Federal supervision sometimes seen in the past, developers and other parties interested in reusing Brownfields sites continue to cite the potential double jeopardy issues as a cause for concern. Administrative reforms, including comfort letters and interagency memoranda of agreement for voluntary cleanups, reflect the more cooperative approach that EPA and many States have managed to develop and that we in New England are now more used to as we seek to address together the still challenging universe of contaminated sites in our region. However, these administrative fixes are not always sufficient to satisfy all interested parties. We believe the changes proposed in S. 2700 will provide definitive answers to those concerns and as such will encourage more participation in our redevelopment efforts.

Finally, from our perspective the bill proposes reasonable standards for a State program. Some States may disagree and seek even greater autonomy but we believe the requirements make sense from an accountability point of view. We are concerned that future regulations not expand on these requirements so as to establish a burdensome paperwork process that would defeat the very purpose of this legislation. The eligibility criteria must remain simple, straightforward and relatively easy to meet, and we hope this objective will be clearly articulated in the remaining deliberations.

Summary and Closing In summary, Rhode Island supports Senate bill S. 2700 on Brownfields as a strong step toward improving Superfund and supporting the reuse and redevelopment of Brownfields nationwide and in particular in our Ocean State. As we all know, the key issue under Superfund, State cleanup programs, Brownfields programs and voluntary cleanup programs has been to develop more tools and more flexibility to allow us to more efficiently facilitate the cleanup of many types of contaminated properties. Flexibility will be especially critical as we respond to new challenges, such as the sites that we have begun to identify as a result of new initiatives, in particular initiatives that pursue watershed protection, urban environmental improvements, Smart Growth, and Total Maximum Daily Load limits for our water bodies that are still not meeting their water quality standards.

We believe S. 2700 adds much needed new provisions for flexibility and efficiency to the CERCLA statute. We strongly support, and need, the liability relief and finality provisions at the Federal level so that we can offer more certainty in our negotiations at the state level. We believe that requirements for state program eligibility, as written in this bill, are a reasonable way to ensure accountability and thereby balance the finality and flexibility of state level decisionmaking. We very much need the proposed funding to States and local governments to continue to develop program capabilities as well as continue to directly evaluate, clean up and redevelop Brownfields properties. This bill will strengthen participation in and coordination of Brownfields redevelopment all government levels.

Once again, I would like to commend Senator Chafee and the other committee members for crafting a Brownfields bill that has bi-partisan sponsorship and addresses many of the concerns we have had with the Superfund program. Thank you again for the opportunity to testify, from the Rhode Island perspective, on this most important legislation. .

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STATEMENT OF VERNICE MILLER-TRAVIS, EXECUTIVE DIRECTOR, PARTNERSHIP FOR  
SUSTAINABLE BROWNFIELDS REDEVELOPMENT

*Introduction*

Good afternoon, My name is Vernice Miller-Travis, and I currently serve as the Executive Director of the Partnership for Sustainable Brownfields Redevelopment, based in Baltimore, Maryland. I also serve as a member of the National Environmental Justice Advisory Council (NEJAC), where I chair the Waste and Facility Siting subcommittee. Through my participation in the NEJAC I have worked closely over a period of several years with EPA's Office of Solid Waste and Emergency Response in the development of it's National Brownfields Action Agenda. In my previous appearances before this sub-committee I represented the Natural Resources Defense Council and the environmental justice community. Today I am pleased to add my voice to the chorus of those that support this legislation. I would also like to take this opportunity to introduce Ms. Donele Wilkens, Founding Director of Detroiters Working for Environmental Justice. Ms. Wilkens is one of the leading environmental justice advocates in the state of Michigan, and serves on the Detroit Brownfields Redevelopment Authority. She is submitting her own comments about this legislation for your consideration representing the perspective of community residents at or near urban Brownfields sites. Today I am pleased to be able to speak affirmatively about S. 2700 and it's provisions, as opposed to speaking against the legislation which has been my posture in my previous appearances before this body. However, I do have a few areas of concern about some of the provisions contained within this legislation which I will share with you this afternoon.

*General Comments*

My general review of the legislation in consultation with members of the Board of the Partnership for Sustainable Brownfields Redevelopment, as well as consultations with several other Brownfields stakeholders is that S. 2700 is a well crafted, useful, creative approach to Brownfields redevelopment. That being said I want to raise the following general concerns about this legislation.

The bill does not address the question of the presence of lead and/or asbestos removal from buildings on Brownfields sites (buildings that themselves will either be refurbished or demolished). The bill does not address the remediation of abandoned gas stations as an eligible recipient activity for Federal Brownfields grant moneys. My biggest area of concern is the blanket delegation of enforcement authority for Brownfields redevelopment to State Voluntary Clean-up Programs. The legislation assumes that all states have the resources to implement a vigorous VCP program that can assume the enforcement responsibilities that EPA has heretofore held. For

a variety of reasons this assumption is not accurate. All states are not equal in terms of the resources available to them to implement and maintain strong VCP's. Some states as a matter of political philosophy are opposed to vigorous enforcement actions that they believe will diminish the interest by private developers in purchasing and redeveloping Brownfields sites within their states. In these states local communities, especially low income and communities of color, are facing an up hill battle when trying to get state and local agencies to balance economic development considerations with the need for environmental and public health considerations. To address this particular concern I suggest that the legislation include language that states would have to demonstrate to EPA the existence, and effectiveness of a state Voluntary Clean-up Program before the state could receive delegated enforcement authority for a Brownfields program. Through this process the state would need to certify that they indeed have an established program of corrective action to clean-up and redevelop Brownfields sites. The state would also need to demonstrate that their corrective action program has been and can be implemented consistently across the state in all communities regardless of race, ethnicity or economic status. Title II of the Bill—Brownfields Liability Clarifications—is perhaps the most creative and forthright legislative attempt to address innocent third party and prospective purchasers in the chain of liability, while maintaining and preserving the principle of strict, joint and several liability. The proposed amount of the appropriation of Federal moneys to accompany this bill is a welcome increase in proposed Federal Brownfields dollars. As is the definition of eligible entities who can access these dollars (see specific comments) and the expanded definition of what is an eligible recipient activity or use. The section of the bill entitled {C} Mechanisms and resources to provide meaningful opportunities for public participation, and (D) Mechanisms for approval of a clean up plan, are especially appreciated as delineated sections of this legislation. Last, the language included in Sec. 128. Brownfields Revitalization Funding, sub section (3) CONSIDERATIONS—(A) “the extent to which a grant will facilitate the creation of, preservation of, or addition to a park, is a welcome addition to the legislative thinking about what constitutes a beneficial reuse of a Brownfields site? It also affirms the perspective that a beneficial reuse can be something other than a commercial or industrial reuse of a Brownfields site. Additionally sub section (B) the extent to which a grant will meet the needs of a community is the first legislative attempt to codify the needs of local communities as a paramount consideration in Brownfields redevelopment considerations.

#### *Specific Comments*

##### *Title I.*

Sec. 128. BROWNFIELDS REVITALIZATION FUNDING. “DEFINITION OF ELIGIBLE ENTITY. The term “eligible entity” should include community development corporations and non profit organizations.

- In the same section the sub-section entitled (3) RANKING CRITERIA, (B) The potential to stimulate economic development The definition of economic development should specifically delineate enhanced economic opportunity for community residents and area small businesses. Currently economic development is being defined as a remediated site that is being reused. The reuse does not always create new or enhanced economic opportunity for area residents and existing small businesses.

- Letter (I) of this section—The extent to which the grant provides for involvement of the local community in the process of making decisions We suggest that here you insert the following recommendation: with respect to establishing a process for the involvement of local communities in the process of Brownfields decisionmaking a recipient can utilize the ASTM E 1984–98 Standard Guide for the Sustainable Restoration of Brownfields Properties. This is a multi-stakeholder guidance which I and several members of the Partnership for Sustainable Brownfields Redevelopment helped to draft.

- Section 203. INNOCENT LANDOWNERS, sub section (iii) CRITERIA (II) should read as follows: Interviews with past and present owners, operators, and occupants of the facility, and past and present residents or commercial businesses at or near the site in question, for the purposes of gathering information regarding

- Section 129. STATE RESPONSE PROGRAMS, sub section (1) ENFORCEMENT, sub section {C} PUBLIC RECORD should read as follows: The public record shall identify whether or not the site, on completion of the response action, will be suitable for unrestricted use and, if not, shall identify the institutional controls relied on in the remedy and how the institutional control will be enforced and monitored over time.

### *Conclusion*

I believe that this bill goes a long way toward advancing the cause of Brownfields clean-up and redevelopment. I want to caution the drafters of this bill to recognize that all your efforts to craft a comprehensive and inclusive bill will be for naught, if state and local government entities do not take the opportunities afforded in this bill to work with local communities in meaningful and measurable ways toward the goal of Brownfields redevelopment and community revitalization.

The environmental justice perspective on Brownfields redevelopment is that these sites must be viewed as a component of a broader economic and community revitalization strategy. A strategy that seeks to rebuild and revive these long dormant communities into healthy, safe and economically viable areas. This is what is meant by the term "sustainable Brownfields redevelopment."

Back home in our respective communities, we are witnessing Brownfields programs and projects that promote economic opportunities for entities other than the long suffering residents and small business owners in our nations most economically and environmentally deprived communities, where the bulk of the Brownfields sites are located. We are also witnessing successful Brownfields projects that have mushroomed into wholesale gentrification of our communities, for example: Jersey City, New Jersey, Downtown Detroit, the 125th Street commercial corridor in Harlem, New York, and many other examples across the country. We believe that real economic development is that which enhances the quality of life of community residents and improves economic opportunities for community businesses.

We believe that the issue of sustainable Brownfields redevelopment is crucial to pursuing a different path toward community redevelopment and revitalization in this new century. Sound and sustainable Brownfields redevelopment is one of the critical issues of our time, and this bill takes a significant step in the right legislative direction.

It is clear to me that the crafting of this bill was achieved through major bipartisan give-and-take and consensus building. Please know that your staff efforts and Congressional leadership are very much appreciated, and we look forward to your continued support of Brownfields redevelopment and community revitalization.

Thank you for the opportunity to share my thoughts with you on the "Brownfields Revitalization and Environmental Restoration Act of 2000."

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### STATEMENT OF WILLIAM McELROY, AMERICAN INSURANCE ASSOCIATION

Mr. Chairman and members of the subcommittee: This testimony is submitted on behalf of the American Insurance Association ("AIA"). The AIA is the principal trade association for property and casualty insurance companies, representing more than 370 major insurance companies which provide all lines of property and casualty insurance and write more than one-third of all direct commercial property and casualty insurance in the United States.

We are delighted to have this opportunity to comment on S. 2700, the Brownfields Revitalization and Environmental Restoration Act of 2000. We believe the bill constitutes a small, but positive step toward cleaning up hazardous waste sites. We are especially happy to observe that the bill does this through a mechanism other than litigation. Finally, we are pleased to note the bill is the product of a bipartisan consensus of the leadership of the Senate Environment Committee and we congratulate the sponsors of this bill for this achievement.

Mr. Chairman, we believe S. 2700 will help facilitate the cleanup and redevelopment of hazardous waste sites throughout the country. Brownfields redevelopment facilitated, encouraged, and stimulated by this bill is undeniably good environmental policy and it is also good business. In fact, insurance related to the redevelopment of old industrial sites and even Federal facilities is a small, but growing area of business for the insurance industry. Thus we are seeing a welcome conjunction between the interests of cities and towns in need of revitalization and the interests of businesses seeking new markets.

The brownfields problem this bill helps address is being faced by cities throughout the country. The contaminated properties we call "brownfields" are typically abandoned industrial or commercial properties that are no longer owned by the parties who were responsible for the contamination. Usually these properties have been obtained by local governments through foreclosure on mortgages, taxes, or other assessments that were in arrears. In other cases the sites are owned by trusts or estates that are financially unable to clean up the contamination. Neither the local governments nor the estates are in a position to indemnify potential purchasers against environmental liability for known or unknown contamination. Some cities now own hundreds of such properties and simply cannot afford to hire consultants



to characterize the environmental condition of these sites and certainly cannot afford to pay for cleaning up the contamination. If cities offer some limited form of indemnity for purchasers or developers of these properties, they risk a downgrading of their financial ratings due to the requirement to report contingent liabilities to auditors and rating organizations. For most cities this would be disastrous.

The predicament for many cities is that they don't have the resources to address the brownfields problem, but they can't develop the resources without addressing the brownfields problem. This would seem to provide an appropriate opportunity for Federal legislation, such as S. 2700.

Title I authorizes grants to state and local governments, and to various redevelopment agencies for site assessment and remediation. While we will leave detailed comments on this provision to the mayors who are testifying today, we would point out that "grants" as opposed to "loans" are exactly what is needed. That's because as one might expect, the cities and towns most in need of brownfields redevelopment activity are often those that can least afford it, by definition. A loan simply digs the financial hole they are already in a little deeper. Therefore, grants are often the only practical way for these cities to begin to address the problem.

Title II makes modest amendments to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or commonly referred to as "Superfund") by exempting from liability innocent contiguous property owners; innocent prospective purchasers; and innocent landowners. All of these exemptions would apply only under very limited circumstances, detailed with great specificity in the bill. It is uncertain whether many parties would be affected by the contiguous property and innocent landowner provisions; no doubt the few who may be affected will certainly be enthusiastic supporters of these exemptions. It should be noted, however, that there are a number of risk management techniques, including insurance, currently available to prospective purchasers. Some of the types of insurance available to prospective purchasers and others involved in these transactions are mentioned below. Title III sets standards for Federal intervention during or after a state-supervised cleanup. We realize this issue has been a source of significant controversy. In any event, we also recognize that as a matter of public policy no cleanup is ever going to be entirely "final" in the sense that there will never be an opportunity for future government intervention. This is one of the areas where a combination of risk management techniques, including insurance, can facilitate the redevelopment of contaminated properties notwithstanding this lack of "finality." Insurance is currently available to pay the costs of additional cleanup of specified contaminants after the initial cleanups have been completed and approved by state or Federal regulators. In some cases, insurance policies may also be written to respond to additional cleanup that is required due to changes in the environmental laws.

Insurance is now emerging as one of the most useful tools for managing environmental liability risk in the redevelopment of contaminated properties. In addition to insurance for the re-opening of completed cleanups as discussed above, insurance is now being written to cover: cost overruns for specific remedial action plans; the discovery and remediation of new contaminants; third party bodily injury, property damage, and cleanup claims arising from newly discovered contaminants; and, in some cases, all parties to a brownfields redevelopment transaction, including the sellers and buyers, the banks making the loans for the purchase and for the cleanup itself, and the engineers and contractors involved in the cleanup.

Mr. Chairman, as you and the members of this committee well know, AIA, along with most of the private sector, has long sought comprehensive reform of the Superfund program. For the insurance industry, Superfund has long been a quagmire of litigation into which we were unwillingly dragged. Frankly, we are frustrated that after all these years substantial reform still eludes us. But we understand the political obstacles to reform which have contributed to make the larger debate so intractable.

S. 2700 will provide necessary relief to many cities struggling with the problem of abandoned, contaminated properties. Significantly, we note that no attempt has been made to reinstate the Superfund taxes as part of this bill and no attempt has been made to add other special liability exemptions for favored parties. We heartily endorse this approach. In addition, whereas we think this bill is beneficial in its current form, we will very strongly oppose any attempt to reinstate the expired Superfund corporate taxes without the enactment of comprehensive liability and remedy selection reform. Likewise, we will oppose any special liability exemptions that may be added for sympathetic groups of responsible parties if the costs of those exemptions are shifted to the remaining parties.

Mr. Chairman, once again we congratulate you on this consensus bill and we sincerely hope this is the first in a long line of consensus legislation to come.

## STATEMENT OF ALAN FRONT, SENIOR VICE PRESIDENT, THE TRUST FOR PUBLIC LAND

Mr. Chairman, my name is Alan Front, and I am pleased to appear before the subcommittee today to share the perspective of The Trust for Public Land, a national nonprofit land conservation organization, regarding the vision for community revitalization embodied in S. 2700. I welcome this opportunity to discuss my organization's enthusiastic support for this legislation.

First, I want to express my gratitude to Chairman Chafee and Senator Lautenberg for your leadership in introducing a legislative initiative that holds so much promise for our nation's neighborhoods. The subcommittee's expeditious consideration of the bill and the many cosponsors working with you to advance it affirm the central, transformative importance of brownfields restoration and reuse. In our own work with local partners across America, The Trust for Public Land has witnessed first-hand how reclamation of derelict properties can bring new life not only to the landscape, but to the economies and the spirit of communities as well.

*TPL, Green Spaces, and Brownfields*

Since 1972, TPL has worked to protect land for people, helping government agencies, property owners, and local interests to establish and enhance public spaces for public use and enjoyment. By arranging conservation real estate transactions, TPL has facilitated the protection of well over a million acres of park, forest, agricultural, and other resource lands. Through these "win-win" partnerships, many communities have woven an appropriate open-space thread into their overall land-use fabric. In the process, they have recognized the interdependence of the built environment and the natural one, and have reaped the benefits of balanced growth. . At the same time, land-use trends on a national scale are raising new concerns about whether this tenuous balance can be maintained. We have seen the rate of open space conversion more than double in the past decade; according to recent Department of Agriculture statistics, farmland and other open space is yielding to development at an average rate of nearly 400 acres every hour. And from the wilderness to the inner city, even as these open spaces are being lost, Americans are more and more urgently expressing their need for more parks, greenways, wildlife areas, community gardens, and scenic protection.

From TPL's earliest days, it has been clear that brownfields even before the word was coined have been a necessary, integral component of any full-fledged strategy to meet the needs of both development and conservation. Left unremediated, these idled properties pose a serious, often-insurmountable threat to neighborhood stability, economic development, public health and safety, and quality of life. Conversely, brownfields reclamation through new commercial or residential development, or through creation of new community parks or playgrounds, or through a combination of these land uses can spark a true neighborhood renaissance.

In some of TPL's first projects, in the inner cities of Newark and Oakland, we watched just this sort of redemption as community groups turned trash-strewn, contaminated lots into gardens and pocket parks. Since then, we have participated in a wide range of brownfields-to-parks conversions. In Atlanta, new visitor facilities at the Martin Luther King National Historic Site have replaced an old Scripto Pen factory. On Seattle's Elliot Bay, a contaminated former Unocal site is being cleaned up and transformed into a waterfront sculpture garden. And along the Los Angeles River that desolate concrete channel best known as a film location for "Terminator" movies new parks and recreation areas are rising up on previously contaminated factory sites.

There is ample historical precedent for these powerful symbols of neighborhood renewal. In Kansas City, for example, abandoned industrial sites were the foundation for the city's entire park system. Chicago's long-admired lakefront park system sits on the site of the city's former tannery district; New York's Bryant Park and Boston's Charles River greenway have similarly challenged pedigrees. And in each case, the greening of abandoned lands brought new private investment, new economic opportunity, and new urban vitality.

Moreover, just as newspaper recycling saves trees, brownfields recycling saves undeveloped landscapes. The simple fact is that there is not enough "new" land in our urban areas and rapidly growing suburbs to provide for the mix of open space and development upon which healthy communities depend. Each of the estimated 450,000 to 600,000 brownfields in America is a missed opportunity for a public recreation facility, a housing complex, or an office park that likely will be built elsewhere. Consequently, unrestored brownfields serve only to ramp up the competing land-use pressures on the ever-shrinking inventory of pristine lands.

Plainly put, brownfields recovery can green neighborhoods, resolve development-versus-preservation conflicts, promote economic expansion, and inhibit sprawl. For

all of these reasons, TPL encourages the subcommittee to add some much-needed arrows to the brownfields-conversion quiver by considering and reporting S. 2700. The work of local governments and other community partners with whom we work would be enhanced exponentially by the resources provided in Title I of the bill. We particularly appreciate the significant increase in local capacity that the bill's various funding provisions would afford.

*S. 2700 New Tools to Renew Lands*

The structure and mechanisms of Federal funding under the Brownfields Revitalization and Environmental Restoration Act will provide a substantial and much-needed Federal commitment to urgent community needs. In tandem with the considerable nonFederal partnership support that this legislation will leverage, S. 2700 will spur the clean-up and reuse of a broad spectrum of currently idle properties. In turn, these restoration success stories will promote precisely the kind of economic, environmental, and quality-of-life balance discussed above.

The Trust for Public Land is especially encouraged by the inclusion of the following specifics in S. 2700.

- TPL believes that the criteria for entities eligible to receive grants and loans are appropriately inclusive. This section permits an appropriate diversity of conservation and/or redevelopment partners including Indian tribes and state-created conservancies to participate.
- The bill's Site Characterization and Assessment Grants are similar to the successful model of EPA's assessment demonstration pilot program, which already have been an important component in brownfields-to-parks conversions.
- Within the proposed revolving loan funds, we appreciate the bill's tailored seed-money approach regarding remediation funding, including the authorization of grants where recipients are unable to draw upon other funding sources. This provision will address concerns that underserved communities might not be able to benefit from this bill. It is precisely these communities that have some of the greatest needs for, and stand to reap the greatest benefits from, brownfields revitalization.
- Along similar lines, we strongly endorse the bill's encouragement of grants for the "creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property " This provision puts brownfields-to-parks conversions, which do not typically generate an ongoing revenue stream from which a loan might be repaid, on an even footing with economic redevelopment. As a result, it will ensure that parkland conversions will improve life in brownfields-affected neighborhoods as well as securing outlying lands against the tide of sprawl.
- The bill as introduced also contains a number of important flexibilities for EPA to adaptively apply resources to areas where the need is greatest. Among these are provisions allowing for increased assessment grants for more critical and difficult projects; additional support for communities best able to leverage nonFederal commitments; assistance for communities to develop site remediation programs; and the potential waiver of the program's matching requirement for communities truly unable to meet this obligation.
- We also support the bill's grant ranking criteria. Among these are further encouragements for environmental justice projects, economic stimulus, brownfields-to-parks conversion, synergy with nonFederal funds, and use of existing infrastructure. This latter preference is a particularly useful inducement for smart growth.
- Last and certainly not least, the meaningful annual funding levels for these programs will allow the Federal Government to become a true partner to state and local entities working to reclaim their landscapes.

With all these benefits, the Brownfields Revitalization and Environmental Restoration Act of 2000 will enable urgently needed, place-specific Federal participation in efforts across the country to foster recreation, open space opportunities, and redevelopment on appropriate sites, and by extension will help to conserve undeveloped resource lands that might otherwise be built upon.

Mr. Chairman, please accept the thanks of the Trust for Public Land for your commitment to and craftsmanship of S. 2700 and we look forward to working with you, Chairman Smith, Senators Lautenberg and Baucus, and the bill's other cosponsors toward enactment.

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STATEMENT OF KEVIN FITZPATRICK, CHAIRMAN, ENVIRONMENTAL POLICY ADVISORY COMMITTEE, THE REAL ESTATE ROUNDTABLE

The Real Estate Roundtable is the vehicle through which the nation's leading public and privately held real estate owners, investors, lenders and managers work, together with the leadership of major national real estate trade organizations, on

Federal policy issues. It actively coordinates policy positions with major national real estate organizations and communicates with lawmakers, regulators and the public about real estate. Priority is given to the identification, analysis and coordination of advocacy on national policies relating to capital and credit availability, environmental matters, taxation and technology-related issues.

#### *Introduction*

Thank you Chairman Chafee, Senator Lautenberg. My name is Kevin Fitzpatrick. I am president and CEO of AIG Global Real Estate Investment Corp., part of the American International Group, the insurance and financial services companies. Our company has national and international experience with the full range of real estate ownership and financing issues including the specific challenges associated with "brownfields" redevelopment. We operate in all 50 states, 150 counties and jurisdictions, and throughout the world.

I am speaking today on behalf of The Real Estate Roundtable. The Roundtable represents the nation's leading private- and publicly held real estate owners, investors and managers. Its members have long advocated Federal policy reforms that will facilitate, rather than undermine, the efforts of local communities across the country to advance "smart growth." "The Brownfields Revitalization And Environmental Restoration Act Of 2000" or S. 2700 includes just these kinds of policy reforms.

#### *S. 2700 Provides a Roadmap for Brownfields Redevelopment*

We have done a good job in this country of encouraging recycling in the area of consumer goods, such as plastics, bottles, and paper. In our view, it is time that we made the same national commitment to recycling our nation's blighted urban and rural brownfields properties. S. 2700 provides the real estate industry, and its partners in state and local governments, with a detailed roadmap for doing just that.

Among those blighted properties, the ones that often suffer the greatest market stigma are those with actual, or even simply perceived, environmental issues. We know them when we see them. They include the hulking warehouses, dormant smokestacks and abandoned shells of industrial plants that still line some of the nation's inland waterways and railroads. They stand as monuments to the "old economy." With the help of the economic and regulatory incentives included in S. 2700, many of these properties can be recycled to serve the commercial, residential, retail, and recreation needs of the information age and its so-called "new" economy.

#### *Status Quo Remains Highly Unfriendly to Brownfields Redevelopment*

Today, companies that acquire certain environmentally distressed real estate also end up acquiring the market stigma and the uncertainties associated with Superfund cleanup liability. In the past our members have testified before this subcommittee, and others in Congress, that innocent parties that act responsibly in the redevelopment of these sites should not be punished by Federal laws (Copies of that testimony are attached.) They should not be asked to take the risk that a \$500,000 investment will become a \$10 million dollar liability. The real estate industry is fully prepared to take the business risks associated with any prudent real estate development project. For the most part, however, the development community is not prepared to take the kind of litigation and liability risks presented by many brownfields projects.

In short, when the Congress passed the Superfund law in 1980 its purpose was to cleanup contaminated properties, whether industrial, commercial or residential. Nobody contemplated the possibility that the law would actually serve as a barrier to cleanups, cleanups the real estate companies might otherwise be willing to pursue at their own expense. S. 2700 will go far to correct this unintended consequence of Federal policymaking.

#### *S. 2700 Will Encourage the Highly Constructive Role of State Voluntary Cleanup Programs in Facilitating Brownfields Redevelopment*

A growing number of states have taken highly constructive steps to encourage brownfields redevelopment. They have initiated voluntary cleanup programs (VCPs) that provide participants with authoritative "comfort" regarding the limits of their residual risk of cleanup liability under state law. Building on principles included in legislation offered by Senator Lautenberg almost 10 years ago, S. 2700 will strengthen these programs in a number of ways, both legally and financially.

In our view, the greatest asset this legislation will offer state VCPs is the ability to extend the zone of "comfort" many now offer brownfields redevelopers so that it responds to liability concerns under the Federal Superfund law. S. 2700 includes a provision that will, in most cases, reassure participants in state voluntary cleanup programs that their state-approved cleanup is not likely to be "second-guessed" by

Federal officials. This so-called “finality” assurance is crucial not only to potential buyers and sellers of brownfields properties but to their financial partners as well. We are very aware of the leadership shown by the authors of this bill in finding the highly elusive middle ground on this critical finality issue. Their creativity in doing so will prove highly valuable to communities across this country.

*S. 2700 Will Codify Groundbreaking EPA Administrative Reforms*

Finally, S. 2700 builds on the valuable work of the Environmental Protection Agency in developing administrative reforms in the area of “prospective purchaser” and “adjacent landowner” protection. These reforms reflect progressive and practical thinking on the part of EPA regarding how to mitigate some of the highly adverse, if unintended, consequences of the Superfund law on brownfields redevelopment. While extremely valuable in specific circumstances, the “guidance” documents issued by EPA to clarify prospective purchaser and adjacent landowner liability remain simply that policy “guidance.” By their own terms these guidance documents do not carry the full force and effect of law and the Agency remains free to take action “at variance” with them at any time. The prospective purchaser and adjacent landowner provisions in S. 2700 will provide self-implementing and legally enforceable protections for would-be brownfields redevelopers.

*Conclusion*

I hope I have made it clear that with so many other investment options available at any given time, the prospect of open-ended liability under Superfund remains a real deal-killer. If, however, the Superfund law were changed along the specific lines of S. 2700 so that the potential liability of would-be purchasers and redevelopers of brownfields became better defined, the real estate community would be far more ready, willing and able to invest private capital into these sorts of projects.

We look forward to working with the members of this subcommittee and the growing number of bipartisan cosponsors of S. 2700 to encourage its enactment into law during this Congress. Thank you.

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STATEMENT OF JOHN GATES MEMBER, NATIONAL REALTY COMMITTEE

BEFORE HOUSE COMMITTEE ON ENERGY AND COMMERCE

*Introduction*

Thank you Chairman Boehlert. My name is John Gates. I am President and CEO of Center Point Properties, a Chicago-based real estate investment trust, or REIT, publicly traded on the New York Stock Exchange. I am speaking today on behalf of the National Realty Committee.<sup>1</sup> As Real Estate's Roundtable in Washington, NRC represents America's leading real estate companies. Many NRC member companies, like CenterPoint, have real-world experience rehabilitating brownfields sites. With a portfolio of more than 18 million square feet, our company is metropolitan Chicago's largest owner of industrial property. Our properties house factories, business parks and warehouses. The Chicago region has more than 1.2 billion square feet of these types of properties, making it the nation's largest and most diverse industrial property market. To put that number in perspective, it's more industrial property than you'll find in all of New York, all of Los Angeles, or in six Atlantas. In fact, it's more industrial space than in the entire United Kingdom.

*Brownfields Reform Makes Good Economic Policy*

At the outset let me say that reforming the Superfund law to encourage brownfields redevelopment makes a lot of sense in terms of national economic policy. The private market stands ready to bring a lot more of these brownfields properties into productive, tax-generating uses. In the process, we can create jobs and put people back to work. Right now the Superfund law is wasting unemployment entitlement dollars by actually contributing to that unemployment. In addition, the law is squandering scarce EPA resources by focusing them on only moderately contaminated properties—well within the capability of the private sector (in cooperation with state and local officials) to remedy.

Your prompt action to correct the skewed incentives in existing law will be, in Washington vernacular, “revenue positive.” In industrial real estate we have a rule of thumb that 600 square feet of occupied manufacturing space produces one job.

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<sup>1</sup> On March 4, 1997, NRC testified before the Senate Subcommittee on Superfund, Waste Control and Risk Assessment, of the Senate Committee on Environment and Public Works. The testimony and followup questions and answers (attached hereto for the record) addressed EPA administrative reforms, specific Senate legislation and the “finality” issue.

By that formula, simple clarification of the law could create up to 50,000 new jobs in the Chicago area alone. At a time when national policy is focusing on how to help citizens move from welfare rolls to real and productive jobs, brownfields redevelopment can be part of the answer.

*Case Studies: Why Investors Avoid Brownfields*

In my hometown a drive through its most blighted areas offers evidence of the incredible social dysfunction that can occur when, as in Chicago's case, approximately 1,500 acres of brownfields are imprisoned by more than a decade of failed government policy. It is, therefore, very unfortunate that there are substantial disincentives to investment in brownfields sites, investments that could help pay for cleanups by injecting new capital into rehabilitation projects. Clearly, part of the problem here is that the Comprehensive Environmental Response, Compensation and Liability Act simply sets up too many obstacles to investment.

Don't get me wrong. In many cases the inner city—where so many of these brownfields properties are located—is precisely where many businesses want to be. The economics are often right. The resources are there—it's where the work force is and it's where the critical infrastructure, including transportation, is already in place. It's where we find the vast majority of our national inventory of older industrial buildings, ripe for redevelopment. Unfortunately, it's also the province of an intimidating and confusing Federal cleanup law. The unintended consequence of that law has been to perpetuate a legacy of urban decay by inhibiting the very kinds of investment our company and many others are in business to make.

Let me share with you, from my own personal experience, the way the current law can undermine efforts to reinvest in our cities. In the early 1990's one of our predecessor organizations purchased a fully leased and occupied 250,000 square-foot manufacturing and warehouse facility on Chicago's west side. The facility employed more than 300 people, mostly neighborhood residents. After our purchase, we discovered sub-surface contamination. In responding to the discovery, we obtained environmental assessments from highly reputable environmental consultants. The experts advised us that there was no public health risk to workers or neighbors because the contamination had reached a depth of only four feet and was, therefore, not deep enough to affect any water resources. Of course, that assumes there were any water supplies present in this industrial district, and there were none. We were further advised that much of the problem was addressed by the thick cement floor of the building, which effectively capped the contaminated soil.

However, because the property fell within the jurisdiction of the Superfund law, no one could establish a clean up standard tied to the property's real-life use as a manufacturing and warehouse facility. Unfortunately, an impasse was reached with the regulators and, as a result,

the building was vacated and 300 inner city manufacturing jobs were eliminated. The building was ultimately demolished, huge quantities of soil removed to a suburban landfill and, most discouraging of all, the land still sits vacant. I'm convinced this entire scenario could have been prevented. Our expert told us the cleanup should have been, at most, a \$100,000 problem—one we could have resolved ourselves. Instead, it became a \$20 million dollar problem, one that ultimately ended up in litigation and, in the process, eliminated the livelihood of 300 inner city workers. It's my sense that most of the jobs moved to the suburbs and the local community continued its decline. I know stories like this are continuing to play out in many communities today, and let me assure you, when you face the threat of legal liability for cleanup costs of this magnitude, it makes so-called "greenfields" projects a lot more attractive.

Here's another example. Last year, I volunteered a week of my time, as part of a team of real estate professionals, researching how best to revitalize the Collinwood community of Cleveland, Ohio, a community stigmatized by large numbers of brownfields properties. The project was sponsored by the Urban Land Institute, a nonprofit education and research institute focused on land use and development. We were all there to provide an unbiased assessment of how to revitalize this 5.6 square mile area. Its prospects should have been great. After all, it had a tremendous transportation system, an abundant work force and was near thriving business communities. The long and short of it is that, like the empty lot in Chicago that used to be a factory, investors are scared off by the risk of open-ended cleanup costs. That is the sad reality.

*Changes to the Superfund Law Are Needed*

I hope I have made it clear that, with so many other investment options available at any given time, the prospect of open-ended liability is a real deal-killer. If, however, the CERCLA law were changed so that the potential liability of would-be pur-

chasers became clear, the real estate community would be far more ready, willing and able to invest private capital in brownfields redevelopment. In addition, to make many of these transactions work, we will need a lot more certainty that clean-up decisions are final determinations under state and Federal law.

This certainty issue points up the fact that it takes a willing seller and a willing buyer to complete a brownfields transaction. To spur brownfields development it's appropriate, in the right situations, to give owners who are willing to clean up properties themselves under a state voluntary cleanup program some relief from Federal liability. Right now there are significant economic incentives for these current owners not to sell or redevelop these properties. In fact, as long as these properties have not been designated for investigation and cleanup by EPA or the states, many of these property owners consider themselves better off simply putting a fence around their property and waiting for market conditions to improve or Federal law to change. As long as the owner leaves the property alone, the owner is not required to test or otherwise investigate the contamination level at the site. Waiting defers any environmental cleanup costs and allows time for the level of contamination to lessen through natural processes, such as dilution. State voluntary cleanup programs have begun to address and, in many cases, overcome this situation. However, if such an owner is not protected from further Federal or state enforcement actions, the cost and time to complete redevelopment projects cannot be accurately estimated. Without the ability to estimate these factors many property owners will choose to wait it out. Those kinds of decisions keep the property off the market—benefiting no one.

We also need to see more progress in resolving a problem sometimes referred to as “how clean is clean.” It is critical to obtain more standardization in this area as well as appropriate tiering of cleanup levels so they track anticipated land uses. An industrial project is not going to be a children's playground any time soon. To require cleanups that assume such a land use will only result in the permanent idling of many properties.

#### *Conclusion*

I believe companies like ours can do as much, or more, to solve brownfields problems as any other witness you'll hear from today. But make no mistake about it: as public companies, our first obligation is to our shareholders, and we cannot—and will not—expose their investments to open-ended liability under the Superfund law. Without question, the contamination of thousands of acres of investment grade property is one of our national tragedies. However, in large measure that is yesterday's news. Today's news, equally tragic in my view, is the unintended side effects of the Superfund law, which continue to perpetuate an equally disturbing legacy of urban decay. This half of the problem will clearly extend far into the 21st century unless Congress acts now.

I understand many of the changes NRC supports are included in a number of pending House and Senate bills. In addition, they were included in legislation in the last Congress designed by the chairman and others. We have been supportive of those efforts and are here today to encourage the 105th Congress to take up, once again, the important task of reforming the Superfund law so that more cleanups can be achieved more quickly and the law is no longer an impediment to brownfields redevelopment.

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STATEMENT OF J. PETER SCHERER, VICE CHAIRMAN, ENVIRONMENTAL POLICY  
ADVISORY COMMITTEE, NATIONAL REALTY COMMITTEE

BEFORE SUPERFUND SUBCOMMITTEE, 105TH CONGRESS

#### *Introduction*

Thank you Chairman Smith. My name is Peter Scherer and I am a Senior Vice President with The Taubman Company. The Taubman Company is a national real estate company specializing in the development and management of regional shopping centers. I am speaking today on behalf of the National Realty Committee. NRC represents the nation's leading real estate owners, builders, managers, lenders and advisors. As such, the organization has focused extensively on the national policy issues associated with the redevelopment of our nation's brownfields properties.

Several weeks ago I was here in Washington and had the pleasure of meeting with Jeff Merrifield of the chairman's staff and Scott Slesinger from Senator Lautenberg's office. I left that meeting encouraged and energized, and I am delighted to have the opportunity to share with you today some thoughts on what the real estate industry believes it will take to get our country's nonproductive, modestly

contaminated and, therefore, hopelessly idle, real estate back into the nation's economic mainstream.

Two very positive legislative proposals, S. 8 and S.18, include provisions which reflect a sophisticated understanding of how current law can best be modified to encourage brownfields cleanup and redevelopment. NRC is on record as supporting both these bills.

We are also on record as supporting the efforts made by EPA to foster brownfields development, and while these efforts are encouraging, much more can and should be done to achieve the economic and environmental objectives of S. 8 and S. 18.

As the sponsors of these bills are aware and as EPA Administrator Browner has stated, changes to the Superfund law are required to achieve significant long-term impact in this area. Let me specifically mention some initiatives taken by EPA that the real estate industry applauds. But, at the risk of striking a more sober note, let me also explain why these well intentioned initiatives will ultimately fall short of their intended objectives.

During the past few years, the Administration has become more creative in its efforts to locate potential buyers for properties stigmatized by the specter of CERCLA liability. The Administration seems to have been motivated, in part at least, by the need to market its own growing inventory of brownfields, including those situated on former military installations. Certainly, in the course of pursuing that objective the government has gotten a taste of its own medicine. And, like the private sector, it seems to have learned that absent some new approaches to finding willing buyers for these kinds of sites, the properties will remain idle and, therefore, unproductive for the foreseeable future.

First of all, EPA has removed thousands of sites from the so-called CERCLIS list and has issued guidance encouraging regulators to consider realistic future land uses in determining the extent of cleanup activities. If it's known that a particular property will become a parking structure, then why force cleanup to the level required for a day-care facility? This is a common sense approach which the business community finds workable.

Second, EPA has issued guidance identifying the circumstances under which it will enter into prospective purchaser agreements. These agreements are intended to assure potential investors in contaminated sites that the properties in which they are investing will not become targets of a future enforcement action. Developers are willing to take risks, but there are simply too many other opportunities available for any successful developer to bet his balance sheet on a project with unlimited environmental downside. Not to mention the difficulty in obtaining financing!

Thirdly, on the issue of migrating ground water contamination, where land otherwise suitable for development is situated above an aquifer contaminated by external sources, EPA has issued guidance seeking to reassure owners or purchasers that they will not be targeted for cleanup actions. Again, an example of action on the Agency's part which reflects the fact that new money will not go into a project where the only certainty is uncertainty.

In each of these situations, EPA has set a course which my industry believes is absolutely in sync with the national policy objective of returning our country's brownfields to productive use. So why isn't this enough? Let me tell you—specifically—in 50 words or less. At the end of each guidance document is a disclaimer which reads as follows:

This policy does not constitute rulemaking by the Agency and is not intended and cannot be relied on to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. Furthermore the Agency may take action at variance with this Policy.

As well intentioned as these policies may be, they fall short of providing the kind of certainty necessary to attract private-sector capital.

I come here today not asking for the creation of economic or financial incentives to encourage brownfields development. Rather, in this case, our industry is looking only for the removal of existing disincentives. We are looking for you to level out the playing field and, in doing so, create the kind of certainty that permits prudent investment and intelligent risk assumption. So what is it that we think is needed?

The recently adopted lender protections and the proposed protection for the new purchasers are certainly positive steps, but many brownfields will remain undeveloped unless Congress provides protection from Federal and state enforcement actions for property owners who successfully participate in voluntary cleanup programs.

While recently enacted legislation protects financial institutions from undue liability under Superfund, lenders still have concerns about the value of the underlying collateral and the creditworthiness of their borrowers. If a property that undergoes a voluntary cleanup may be the subject of further Federal and state enforcement



action, a lender may consider the property inadequate for the loan. Moreover, if the borrower may be compelled to pay for the further cleanup after having completed a voluntary cleanup, even if the borrower is prepared to assume the risk, a lender may consider the borrower uncreditworthy and deny the loan. Thus, without some degree of predictability and certainty—and without the promise of finality after a successful voluntary cleanup—many well situated and otherwise prime brownfields will remain idle for want of willing and able developers and lenders.

A number of these concerns would be addressed in a meaningful way by a provision contained in both S. 8 and S. 18. This provision creates a new and eminently workable exemption for those who acquire property in need of some environmental remediation. The so-called “prospective purchaser” provision would look beyond the existing “innocent landowner” defense to address the troublesome (and not uncommon) scenario in which contamination is discovered during the course of preacquisition due diligence.

To utilize this kind of defense, purchasers would be required to undertake prescribed levels of environmental due diligence, including a site assessment in accordance with a standardized protocol. They would also need to take circumscribed steps to limit exposure to known contamination; and cooperate with those responsible for the cleanup. In return for meeting CERCLA’s due diligence requirements, prospective purchasers could move forward and acquire property without fear of incurring the associated CERCLA liability.

Here’s what happens in the real world: environmental due diligence becomes a feeding frenzy for everyone involved, particularly lawyers and consultants. And given the laws today, it’s difficult to blame them. When do you stop peeling the onion? When will that consultant or lawyer provide, in writing, that all information is known or that there is no risk associated with proceeding? More samples, more tests, more lab results are recommended. More time, more money, more risk and uncertainty until ultimately the project dies. You hardly ever have all the information.

Successful business decisions are made when all necessary information is known. My point is that the various amendments to CERCLA I have referred to today would (to a significant degree) replace the uncertainty that kills many deals with the type of stability,

predictability and certainty needed for brownfields initiatives to succeed. Notably, EPA has endorsed this reform and there is no doubt its enactment would make a difference in the real world.

At the end of the day, our industry is asking for nothing more than the kind of certainty and predictability that other Federal agencies are authorized to provide. We ask you to empower EPA to provide the equivalent of the “no further action” letters which can be obtained from the Securities and Exchange Commission, or the private letter rulings that the Internal Revenue Service regularly provides to parties concerned with the consequences of contemplated activities. Certainty inspires confidence, and with it, action.

These legislative proposals—S. 8 and S. 18—form a good base upon which to work in this session of Congress to develop bipartisan reform of CERCLA. In addition, EPA’s continued focus on administrative reforms should be encouraged. Agency reforms combined with legislative reform hold the promise of reducing the stigma associated with these properties by limiting the specter of Federal liability.

The National Realty Committee remains committed to the enactment of policies that encourage reinvestment. Working with the other local and national stakeholders represented here today, our members will continue to help identify, analyze and advocate policies that will achieve the goals I believe we all share.

Thank you.

